

Issue: Compliance/30-day rule; Ruling Date: November 19, 2003; Ruling #2003-413;
Agency: Department of Corrections; Outcome: grievance untimely-administratively
closed.



COMMONWEALTH of VIRGINIA

Department of Employment Dispute Resolution
COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Corrections
Virginia Correctional Enterprises
Ruling Number 2003-413
November 19, 2003

The grievant has requested a compliance ruling in his March 12, 2003 grievance with the Virginia Correctional Enterprises (VCE). The agency asserts that the grievant did not initiate his grievance within the 30-calendar day time period required by the grievance procedure. For the reasons discussed below, this grievance is untimely and may be administratively closed.

FACTS

Until his resignation on July 2, 2003, the grievant was employed as a Correctional Enterprise Production Supervisor. On January 16, 2003, he was verbally informed of the expanded role of his position in the enforcement of security measures for inmates working in the VCE Shop, following the removal of Corrections Officers. On January 21, 2003, the agency implemented a new Shop Security Operating Procedure (SOP) for the institution in which the grievant worked. The new SOP outlined the grievant's new job, responsibilities and duties, and was copied to all VCE staff, including but not limited to the Operations Supervisors and Managers. Subsequently on March 12, 2003, he initiated the present grievance challenging the assignment of these additional responsibilities without an increase in compensation. On May 7, 2003, the third step respondent challenged that the grievant was untimely and would be closed administratively due to noncompliance.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date he knew or should have known of the event

or action that is the basis of the grievance.¹ When an employee initiates a grievance beyond the 30-calendar day period without just cause, the grievance is not in compliance with the grievance procedure, and may be administratively closed.

In this case, the event that forms the basis of the grievance is the grievant's assignment of additional security responsibilities without additional compensation for those duties. These duties were implemented on January 21, 2003, when the agency instituted its new Shop SOP. Therefore, he should have initiated his grievance within thirty days of January 21. The grievant did not initiate his grievance until March 12, 2003, which was untimely. Thus, the only remaining issue is whether there was just cause for the delay.

The reason given by the grievant for his delay was waiting for the new security measures to be fully implemented. He asserts that it was not until March 12 that the full scope of the changes became effective. However, as noted above, the actual event that formed the basis of the grievance was the *assignment* of the duties, which occurred on January 21, 2003 and was detailed in the Shop SOP. The fact that the grievant had not yet assumed each of the duties outlined in the Shop SOP cannot be used to extend the grievance initiation timeframe.

CONCLUSION

For the reasons discussed above, this Department has determined that this grievance was not filed within the 30-calendar day period and is therefore untimely. By copy of this ruling, the grievant and the agency are advised that the agency may administratively close this grievance. This Department's rulings on matters of compliance are final and nonappealable.²

Claudia T. Farr
Director

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¹ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4 (1), page 6.

² Va. Code § 2.2-1001 (5).