

Issue: Compliance/30-day rule; Ruling Date: August 13, 2004; Ruling #2004-762;  
Agency: Department of Conservation and Recreation; Outcome: grievant in compliance



***COMMONWEALTH of VIRGINIA***  
***Department of Employment Dispute Resolution***  
**COMPLIANCE RULING OF DIRECTOR**

In the matter of Department of Conservation and Recreation  
Ruling Number 2004-762  
August 13, 2004

The grievant has requested a compliance ruling in her May 27, 2004 grievance with the Department of Conservation & Recreation (DCR or the agency).<sup>1</sup> The agency asserts that the grievant did not initiate her grievance within the 30-calendar day time period required by the grievance procedure. For the reasons discussed below, this grievance may not be closed for untimeliness.

**FACTS**

The grievant is employed as an Administrative & Program Assistant III. Among other duties, she tapes meetings and transcribes the minutes for the Chesapeake Bay Local Assistance Board. The Northern Area Review Committee met on February 17, 2004, and the grievant claims staff members requested that she accept revisions to the minutes of the February 17<sup>th</sup> meeting that were inappropriate and which altered the integrity of the minutes. On February 25, 2004, the grievant claims the Acting Executive Director advised her to accept the minutes with the changes made by staff. She asserts that as a result, she suffered a serious medical condition and went out on short term disability. She was away from the office on short term disability from February 26, 2004 until May 13, 2004, when she was released to return to work.

On May 27, 2004, the grievant initiated a grievance challenging the following alleged actions of the Chief of Environmental Planning: (i) failure to provide the grievant with the tools the grievant requires to complete assigned duties; (ii) harassment and coercion of the grievant to complete minutes outside of the mandates of Virginia law and outside the procedures contained in the grievant's job description; (iii) permitting falsification of minutes and requiring the grievant to accept them; (iv) negligent behavior and insistence that the grievant perform duties against the grievant's moral, legal and religious beliefs; and (v) violations of the Standards of Conduct for State Employees and Supervisors. Upon receipt of the grievance, the second resolution step respondent stated the grievance was to be closed because the grievance had not been filed within the 30 calendar day time period required by the grievance procedure.

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<sup>1</sup> At the time of the initiation of her grievance, the grievant was employed by the Chesapeake Bay Local Assistance Department (CBLAD). However, on July 1, 2004, CBLAD merged with DCR.

## DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date she knew or should have known of the event or action that is the basis of the grievance.<sup>2</sup> 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 alleged events that form the basis of the grievance occurred as late as February 25, 2004.<sup>3</sup> Therefore, absent just cause, the grievant should have initiated her grievance within thirty days of February 25, or no later than March 26. Because the grievant did not initiate her grievance until May 27, 2004, she must show that there was just cause for her delay. “Just cause” is defined as a “reason sufficiently compelling to excuse not taking a required action in the grievance process.”<sup>4</sup>

The grievant asserts she was unable to timely file her grievance because of a serious medical condition. This Department has long held, however, that illness alone does not automatically constitute “just cause.” To substantiate “just cause,” a grievant must provide evidence indicating that her physical or mental condition was so debilitating that she was unable to file a grievance during the time period in question.<sup>5</sup> This evidence is best obtained through a health care provider’s written determination.

In this case, the grievant’s physician provided a written determination indicating that the grievant’s medical condition from February 26 through May 12, 2004 prevented her from filing a grievance.<sup>6</sup> Accordingly, we find that just cause existed for the grievant’s not having filed her grievance during that period. Because she was released to return to work on May 13, 2004, we will presume she was capable of initiating a grievance on that date. Therefore, the grievant had until June 11 to initiate a grievance regarding the alleged events of February 25.<sup>7</sup> As she filed her grievance on May 27, it was filed in compliance with the grievance procedure, given the just cause for her delay.

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<sup>2</sup> Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4 (1), page 6.

<sup>3</sup> While the grievant’s allegation concerning the failure of the Chief of Environmental Planning to provide her with the tools necessary to perform her job is noted in an email dated February 20, 2004 (rather than February 25), she allegedly had not been given the proper tools by February 25 when she was attempting to complete the minutes and, thus, the “event” challenged was ongoing on the 25<sup>th</sup>. See EDR Ruling #2004-586.

<sup>4</sup> *Grievance Procedure Manual* § 9, page 24.

<sup>5</sup> See EDR Ruling #2001-110 and #2001-180. Thus, if illness merely reduces the amount of time in which a person has to initiate a grievance, the shortened time period does not automatically constitute just cause. Likewise, a diagnosis of stress or depression does not automatically constitute just cause for delay.

<sup>6</sup> Letter from the grievant’s physician, dated August 2, 2004. Documentation supplied by the grievant indicated she was released to return to work on May 13, 2004.

<sup>7</sup> The 30-day count started running on February 25, when the alleged management actions took place. The 30-day count was tolled during the February 26 through May 12 time frame when she was unable to file a grievance, but started running again upon her May 13 release to work.

CONCLUSION

By copy of this ruling, the grievant and the agency are advised that the grievant has five workdays from receipt of this ruling to advance or conclude her grievance. This Department's rulings on matters of compliance are final and nonappealable.<sup>8</sup>

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Claudia T. Farr  
Director

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Susan L. Curtis  
EDR Consultant

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<sup>8</sup> Va. Code § 2.2-1001 (5).