

Issue: Compliance/30 day rule; Ruling Date: August 27, 2004; Ruling #2004-847;
Agency: Department of Mental Health, Mental Retardation and Substance Abuse
Services; Outcome: grievant in compliance



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Mental Health,
Mental Retardation and Substance Abuse Services
Ruling Number 2004-847
August 27, 2004

The grievant has requested a compliance ruling in her grievance dated July 27, 2004 with the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS or the agency). 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 set forth below, the grievance is timely and may proceed through the grievance process.

FACTS

The grievant is employed by the agency as a DSA II Leader Worker. She was suspended pending an investigation of allegations of client abuse/neglect on December 13, 2003 and placed on administrative leave on December 27, 2004. After an investigation, the agency determined that the allegations against the grievant could not be substantiated and returned the grievant to active status effective June 10, 2004.

The grievant claims that on June 10th, she met with the Center Director, who advised the grievant that she would not be allowed to go back to her previous unit assignment on her return to work but would instead be assigned to work in a "floating" capacity.¹ The Center Director told the grievant her reassignment was required by facility policy, which prohibits an employee against whom allegations of abuse or neglect have been made from returning to her previously-assigned unit, even if the charges against the employee were ultimately found to be without merit.

The grievant further alleges that on the same day she was told of her reassignment, she learned that the client who had made the allegations against her was scheduled to be transferred to a different unit. After learning of the planned transfer, the

¹ The agency contends that the grievant was advised, "as early as" June 9, 2004, that she would not be returned to her unit. As the date on which the grievant was told of her reassignment is not material to our resolution of this matter, it is not necessary to determine which of these two alleged dates is correct.

grievant contacted the facility's human resources director to ask if she would be allowed to return to her previously-assigned unit if the client who had complained about her was no longer in the unit. The human resources director agreed that she should be able to return to her previous assignment under these circumstances. The grievant also spoke to her immediate supervisor about the possibility of returning to her previous unit when the client was reassigned, and claims that her immediate supervisor indicated that she would be allowed to return.

Although the grievant was returned to active status on June 10th, she was not assigned to work on that day. The grievant took annual leave from June 10, 2004 through June 19, 2004. When the grievant returned to work on June 19th, she was assigned to work as a floating charge aide. In light of her discussions with the human resources director and her supervisor, however, the grievant understood her reassignment to be temporary, pending the transfer of the client who had complained about her.

On June 23, 2004, the client was transferred to a different unit. The grievant was absent on that day. On the grievant's return to work on June 29, 2004, she was not returned to her previously-assigned unit but instead continued to be assigned to work as a floater. The grievant alleges that on July 15, 2004, her immediate supervisor advised her that, notwithstanding the client's transfer, she would not be reassigned to her previous unit.

On July 27, 2004, the grievant initiated the present grievance. The first step respondent denied the grievant's request for relief on July 28, 2004. Subsequently, on August 3, 2004, the agency administratively closed the grievance on the ground that the grievant had failed to initiate her grievance within 30 days of the incident forming its basis. The grievant contends that the event giving rise to her grievance occurred on July 15, 2004, when she alleges her immediate supervisor informed her that she would not be returned to her previous unit, despite the client's transfer. The agency contends that the grievant knew or should have known of the event giving rise to the grievance as early as June 9, 2004, when the agency claims the grievant was told that she would not be reassigned to her previous unit on her return to work, and in no event later than June 19, 2004, when the grievant returned to work and was reassigned to work as a floater.

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.² When an employee initiates a grievance beyond the 30-day period without just cause, the grievance is not in compliance with the grievance procedure, and may be administratively closed.

² Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4 (1).

In this case, the agency construed the grievant's claim as being a challenge to her reassignment following her return to work. If that event were the basis of her grievance, the grievant's claim would indeed be untimely, absent just cause for delay.

Fairly read, however, the grievant is challenging not the failure to reassign her to her previous unit after her return to work on June 19, 2004, but rather the agency's failure to return her to her previous unit after the complaining client's transfer. Thus, the grievant had to file her grievance within 30 calendar days of June 29, 2004—her first day of work following the client's transfer and therefore the date on which she should have known both that that the transfer had been completed and that she had not subsequently been reassigned to her previous unit. Because the grievant filed her grievance within this 30-day period, the grievance was improperly closed.

CONCLUSION

The grievance dated July 27, 2004 was filed within the 30-calendar day period and is therefore timely. By copy of this ruling, the grievant and the agency are advised that the grievant has five workdays from receipt of this ruling either to conclude the grievance or request to advance to the next resolution step. This Department's rulings on matters of compliance are final and nonappealable.³

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Director

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³ See Va. Code § 2.2-1001(5).