

Issue: Compliance/30-day rule; Ruling Date: September 22, 2004; Ruling #2004-869;
Agency: Department of Mental Health, Mental Retardation and Substance Abuse
Services; Outcome: grievance is timely



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of Mental Health, Mental Retardation, and Substance Abuse Services/ No. 2004-869
September 22, 2004

The grievant has requested a ruling in her August 23, 2004 grievance with the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS or the agency). The agency administratively closed the grievance claiming that the grievant failed to initiate her grievance within the required 30-calendar day period.¹ For the reasons discussed below, this Department finds that the grievance was timely.

FACTS

The grievant was employed as a Residential Counselor. It is undisputed that on July 26, 2004, the grievant received, via certified U.S. Mail, a Group III Written Notice that terminated her employment. The Notice, dated July 23, 2004, asserts that the grievant engaged in patient abuse. The agency asserts that the grievance she initiated on July 23rd is untimely because it “was not initiated within 30 calendar days.”

DISCUSSION

The *Grievance Procedure Manual* lists six requirements for the initiation of a grievance by an employee with access to the grievance procedure.² The agency challenges the grievant’s compliance with the first requirement, specifically, 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.³ This Department has long held that in cases involving formal discipline (Written Group Notices) the ‘trigger date’ for the 30-day rule is the date that “management presents or delivers the Written Notice to the employee.”⁴ When an employee initiates a grievance

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

² See *Grievance Procedure Manual* § 2.4, *Initiating a Grievance*.

³ *Grievance Procedure Manual* § 2.4(1); Va. Code § 2.2-3003(C).

⁴ See EDR Rulings #s 2003-147 and 2002-001.

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beyond the 30-calendar day period without just cause,⁵ the grievance may be administratively closed.

In this case, it is undisputed that the grievant received her Group III Notice in the mail on July 26, 2004. The grievance was initiated on August 23rd, within 30-calendar days of when the grievant received the Written Notice. Accordingly, the grievance is timely.⁶

Within 5 workdays of receipt of this ruling the grievant shall inform the agency of her intention to advance her grievance to the next step or of her desire to administratively close her grievance. This Department's rulings on matters of compliance are final and nonappealable.⁷

Claudia T. Farr
Director

William G. Anderson, Jr.
EDR Consultant, Sr.

⁵ *Just cause* is defined as a reason sufficiently compelling to excuse not taking a required action in the grievance procedure. *Grievance Procedure Manual* § 9.

⁶ The agency contends that on or about the same date that the grievant's Written Notice was mailed (July 23rd), it contacted, by telephone, several employees who were being terminated to inform them that their employment had been severed and that they would soon be receiving formal documentation memorializing their terminations. The agency, however, concedes that it cannot say with any degree of certainty whether the grievant was one of those so notified. Even assuming that the grievant had received a call informing her that her termination notice was in the mail, the 30-day timeframe begins when management presents or delivers a Written Notice, which in the case of a mailed Written Notice is normally when it is received by the employee.

⁷ *See* Va. Code § 2.2-1001(5).