

Issue: Compliance/30-day rule; Ruling Date: September 29, 2004; Ruling #2004-881; Agency: Department of Mental Health, Mental Retardation and Substance Abuse Services; Outcome: grievance is untimely and may be administratively closed.



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 2004-881
September 29, 2004

The grievant has requested a compliance ruling in her September 2, 2004 grievance 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 discussed below, this grievance is untimely and may be administratively closed.

FACTS

The grievant is employed as a Direct Service Associate III with DMHMRSAS. On July 2, 2004, the grievant was issued a Group II Written Notice for neglect of a patient in her charge. The grievant challenged the disciplinary action by initiating her September 2, 2004 grievance.

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.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 agency's issuance of a Group II Written Notice to the grievant. This Department has long held that in a grievance challenging a disciplinary action, the 30 calendar day timeframe begins on the date that management presents or delivers the Written Notice to the employee.² The grievant received the Group II Notice on July 2, 2004 and thus should have initiated her grievance within thirty days of July 2, 2004, or by August 1, 2004. The grievant did not initiate her grievance until September 2, 2004, which was untimely. Thus, the only remaining issue is whether there was just cause for the delay.

To support her claim of just cause, the grievant contends that she delayed initiation of her grievance in order to review a copy of the internal investigation report, which she did not receive

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

² See EDR Rulings 2000-003; 2000-082; 2002-001; 2002-118; 2003-147.

until August 22, 2004. While the grievant may not have known all of the facts uncovered during the internal investigation, she was aware that a disciplinary action had been taken against her upon receipt of the Written Notice on July 2, 2004. Waiting to receive a copy of the investigation report for review does not constitute just cause for the delay in initiating a grievance to challenge the disciplinary action.³ Further, while the 30-day rule may have required the grievant to initiate her grievance before receiving the requested report, there was nothing that precluded the grievant from requesting an extension to the 30-day deadline in order to gather pertinent information and documentation.⁴

Additionally, the grievant contends that she has been treated differently than other similarly situated employees,⁵ and that she did not discover the alleged unfairness until more than 30 days after her receipt of the Group II Written Notice. This Department has held that the 30 calendar day rule is triggered by the grievant's knowledge of the "event or action" directly affecting the grievant's employment, not by the grievant's knowledge of the alleged *impropriety* of that "event or action."⁶ In this case, the event that directly and personally affected the grievant's employment occurred on July 2, 2004, when she received the Written Notice, not when she discovered that another employee may have been treated more favorably in an allegedly similar situation.

CONCLUSION

For the reasons discussed above, the grievant is out of compliance with the grievance procedure. The parties are advised that the agency may mark the grievance as concluded due to noncompliance, and no further action is required. This Department's rulings on matters of compliance are final and nonappealable.⁷

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Director

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³ See also EDR Ruling #2003-101.

⁴ *Grievance Procedure Manual* § 2.2 expressly states the 30-day requirement may be extended. See also *Grievance Procedure Manual* § 8.4, which states that "[u]pon mutual agreement, parties to a grievance may extend all pre-qualification time limits including, but not limited to, the 30 calendar day grievance initiation requirement."

⁵ Specifically, the grievant contends that there have been other similar incidents of alleged neglect that were not investigated by the agency. However, it should be noted that the grievant also states in her grievance that management may not have known about one particular similar alleged incident of neglect and that the incident is now being investigated.

⁶ See, e.g., EDR Ruling 2003-126; compare *Hamilton v. 1st Source Bank*, 928 F. 2d 86, 88-89 (4th Cir. 1990) (court noting that the statutory trigger date in Title VII discriminatory discharge cases is the date of the employee's notice of the employer's "act" (the discharge), not the employee's notice of the employer's discriminatory motivation behind the act). See also EDR Ruling 2003-422.

⁷ Va. Code § 2.2-1001 (5).

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