

Issue: Compliance/30-day time period; Ruling Date: November 12, 2004; Ruling #2004-892; Agency: Department of Corrections; Outcome: grievant in compliance; grievance is timely



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

In the matter of Department of Corrections
Ruling Number 2004-892
November 12, 2004

The grievant through his representative has requested a compliance ruling regarding his September 24, 2004 grievance with the Department of Corrections (DOC). The agency asserts that the grievant did not initiate his grievance within the 30-calendar time period required by the grievance procedure. For the reasons discussed below, this grievance is timely.

FACTS

The grievant was formerly employed as a Repair Supervisor. On August 30, 2004, he was presented a Group III Written Notice with termination for fraternization with an inmate. The grievant initiated a grievance to challenge the disciplinary action by mailing the grievance Form A to this Department. On September 27, 2004, EDR received the Grievance Form A, and mailed it that same day to DOC's central office, where it was received on September 30, 2004.

On September 27, EDR also mailed to the grievant a copy of its transmittal of the grievance to DOC's central office. On October 1, grievant's representative mailed a copy of the grievance to the facility, where it was received on October 4, 2004. On October 6, 2004, the second-step respondent asserted that the grievance 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. Further, the initiation date of a mailed grievance is the postmark or mail date.² In addition, this Department has

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

² *Grievance Procedure Manual*, § 2.4.

consistently held that a grievance initiated in a timely manner but with the wrong management representative will not bar a grievance for noncompliance.³

In this case, the event that forms the basis of the grievance is the grievant's receipt of the Group III Written Notice. The grievant acknowledged receipt of the Written Notice on August 30, 2004;⁴ therefore, he should have initiated his grievance within thirty days of that date, or no later than September 29. The grievant erroneously initiated his grievance by mailing it to this Department, where it was received and mailed to DOC's central office on September 27, within the mandated 30-calendar day time period.

Here, the grievant's timely but erroneous mailing of his grievance to EDR, which then forwarded the grievance to DOC's central office, can be viewed as essentially the equivalent of a timely mailed submission to the "wrong management representative." Accordingly, the grievance was initiated within 30 calendar days of when the grievant knew or should have known of the event that formed the basis of the grievance, and is thus timely.

CONCLUSION

For the reasons discussed above, this Department has determined that this grievance was filed within the 30-calendar day period. By copy of this ruling, the grievant and the agency are advised that within five workdays of the receipt of this ruling, the agency must schedule and conduct the second-step meeting. This Department's rulings on matters of compliance are final and nonappealable.⁵

Claudia T. Farr
Director

June M. Foy
EDR Consultant, Sr.

³ EDR Rulings 99-007; 99-011; 99-171; 2000-008; 2001-195; 2001-230; 2004-645.

⁴ The grievant did not place a date after his acknowledgement. The date indicated by the Issuer is August 30, 2004.

⁵ Va. Code § 2.2-1001 (5).