

Issue: Compliance/initiating grievance with incorrect agency; Ruling Date: January 25, 2005; Ruling #2004-931; Agency: Virginia Department of Transportation; Outcome: grievance not timely



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Virginia Department of Transportation
Ruling Number 2004-931
January 25, 2005

The grievant has requested a compliance ruling in her December 6, 2004 grievance initiated with the Virginia Department of Transportation (VDOT or the agency). The agency asserts that the grievant has failed to comply with the grievance procedure by initiating her grievance with VDOT instead of her current employer Virginia Information Technologies Agency (VITA). For the reasons discussed below, this Department concludes that the grievant has failed to comply with the grievance procedure.

FACTS

In June 1999, the grievant initiated a discrimination complaint with her then employer, VDOT. On June 25, 2004, the grievant began employment as an IT Specialist II with VITA, but her work location remained the same (i.e., the VDOT district in which she was previously employed.) The investigation into the grievant's complaint of discrimination was concluded by the VDOT Civil Rights Division on November 5, 2004. On December 6, 2004, the grievant initiated a grievance with VDOT challenging the untimeliness of its response to her complaint of discrimination, which she claims has resulted in her being denied the right to pursue her discrimination complaint through the U.S. Equal Employment Opportunity Commission (EEOC).

DISCUSSION

The grievance procedure provides that an employee's grievance must arise in the agency in which the employee works.¹ Additionally, this Department has long held that an employee must initiate her grievance with her employing agency.² In this case, the issue being grieved (i.e. VDOT's failure to respond to the grievant's discrimination complaint in a timely manner) involves the alleged inaction of VDOT and its employees and thus arose entirely within VDOT. As such, to be compliant with the grievance procedure, the grievance could and should have been filed during the grievant's employment with VDOT. While the grievant's work location is within a VDOT facility, the grievant's employer at the time she filed her grievance was VITA.

¹ *Grievance Procedure Manual*, § 2.4(2).

² See EDR Rulings #2002-020 and #2003-530.

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.³

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Director

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³ Va. Code § 2.2-1001 (5).