

Issue: Compliance/30 day rule; grievance issues; fighting/physical violence; Ruling
Date: April 19, 2005; Ruling #2005-1004; Agency: Department of Corrections;
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 Corrections
Ruling Number 2005-1004
April 19, 2005

The grievant has requested a compliance ruling in her March 9, 2005 grievance with the Department of Corrections (DOC 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 without just cause and may be administratively closed.

FACTS

The grievant is employed as a Correctional Officer. On January 28, 2005, the grievant was issued a Group III Written Notice with a 30-day suspension for fighting with another Corrections Officer. The Written Notice indicated that the grievant would be suspended from January 31, 2005 to March 9, 2005. On March 9, 2005, the grievant initiated a grievance asserting that the other Corrections Officer had received less severe punishment than she. She asserts that the other Corrections Officer was allowed to return to work on February 28th, whereas she was suspended until March 9th. The agency asserts that the grievance is out of compliance with the grievance procedure because it was not initiated within the mandated 30-calendar day time period.

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.

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

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 January 28, 2005; therefore, she should have initiated her grievance within thirty days of that date. The grievant did not initiate her grievance until March 9, 2005, which was untimely. Thus, the only remaining issue is whether there was just cause for the delay.

The grievant claims that she gained knowledge of the more favorable treatment of the other officer "after the fact." She claims that she was thus unable to grieve something for which she had no knowledge. However, this Department has long 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 (e.g. her Written Notice), not by the grievant's discovery of evidence that the "event or action" (her Written Notice and suspension) may have been unfair or improper.² In this case, the event that directly and personally affected the grievant's employment occurred on January 28, 2005, when she received the Written Notice and suspension, not when she later discovered that another employee may have been treated more favorably in the same situation.

CONCLUSION

For the reasons discussed above, this Department has determined that this grievance was not filed within the 30-calendar day period and is therefore untimely. By copy of this ruling, the grievant and the agency are advised that the agency may administratively close this grievance. This Department's rulings on matters of compliance are final and nonappealable.³

Claudia T. Farr
Director

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

² See EDR Rulings Nos. 2005-941 and 2004-881.

³ Va. Code § 2.2-1001 (5).