

Issue: Compliance/30-day time frame; Ruling Date: March 23, 2005; Ruling #2005-981;
Agency: Virginia Information Technologies Agency; Outcome: grievant out of compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Virginia Information Technologies Agency
Ruling Number 2005-981
March 23, 2005

The grievant has requested a compliance ruling in her February 11, 2005¹ grievance initiated with the Virginia Information Technologies Agency (VITA or the agency). The agency asserts that the grievant failed to initiate her grievance within the 30-calendar day time period required by the grievance procedure. 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, 2004.² 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).

VDOT administratively closed the December 6th grievance stating that the grievant failed to comply with the grievance procedure by initiating her grievance with VDOT instead of her current employer, VITA. The grievant subsequently sought a compliance ruling from this Department regarding the alleged noncompliance. In a January 25, 2005 ruling, this Department determined that the grievant was out of compliance with the grievance procedure.³ Specifically, this Department concluded that the grievance must (1) be initiated with the grievant's current employer; and (2) the events giving rise to the grievance must arise in the agency in which the grievant works.⁴

¹ The grievance is signed and dated December 6, 2004, however it was not initiated with VITA until February 11, 2005.

² According to the grievant, the VDOT investigation into her complaints of discrimination was complete in June 2004 and a decision in her favor was issued by the former head of VDOT's Civil Rights Division. That June 2004 decision was overturned on November 5, 2004 by the current Civil Rights Division head.

³ See EDR Ruling #2004-931.

⁴ *Id.*

The grievant subsequently filed a grievance with her current employer, VITA. VITA administratively closed the grievance stating that the alleged events being grieved occurred in 1999 and as such, the grievance is untimely.

DISCUSSION

As noted above, VITA administratively closed the February 11, 2005 grievance for failure to comply with the grievance procedure's 30-calendar day initiation requirement. Given the facts and issues presented in the February 11th grievance, this Department deems it also appropriate to view the grievance as noncompliant with the requirement that an employee's grievance arise in the agency in which the employee works.⁵ 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. The investigation was pending at VDOT for approximately four years while the grievant was a VDOT employee. As such, to be compliant with the grievance procedure, the grievance could and should have been filed during the grievant's employment with VDOT.

Additionally, this Department deems it appropriate to note that the grievant appears to be under the belief that she could not pursue a claim with EEOC until VDOT's internal investigation was complete. Although this Department understands the grievant's frustration with VDOT's apparently excessive delay in responding to her discrimination complaint, as a general rule, the grievant bears the burden of knowing her rights and responsibilities under the law and pursuing those rights in a timely manner.

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.⁶

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⁵ *Grievance Procedure Manual*, § 2.4(2).

⁶ Va. Code § 2.2-1001 (5).