

Issue: Compliance/30 day rule; grievance issues/compensation-in-band adjustment; compensation-starting pay; Ruling Date: April 13, 2005; Ruling #2005-991; Outcome: grievance is in compliance



*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Corrections/ No. 2005-991  
April 13, 2005

The grievant has requested a compliance ruling in her March 14, 2005 grievance with the Department of Corrections (DOC). 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 set forth below, this grievance is ruled to be timely filed.

FACTS

The grievant is a Correctional Lieutenant with DOC. She was promoted from the rank of Sergeant to Lieutenant in 2001. She claims that she has trained many corrections officers, some of whom are now Lieutenants themselves and the salaries of certain of these individuals surpass hers.

The agency asserts that the grievance should have been initiated within 30 days of the grievant's notification of her promotion to Lieutenant.

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.<sup>1</sup> 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.

The agency asserts that the accrual or "trigger" date for the 30-day rule was November 8, 2001, the date the grievant was promoted to Lieutenant. The grievant argues that she was not aware of the great disparity between her salary and those of recently promoted Lieutenants back in 2001. Assuming that the grievant first became aware of the purported pay disparities in 2001, it might appear that the grievant was bound to initiate her grievance within thirty calendar days of her discovery of the pay

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

disparity, which she failed to do.<sup>2</sup> However, this Department recognizes that courts treat disparate compensation claims differently than other types of claims in terms of *when* the claim accrues.

For example, in analogous discriminatory pay cases, courts have reasoned that “a claim of discriminatory pay . . . involves a series of discrete, individual wrongs rather than a single and indivisible course of wrongful action.”<sup>3</sup> Thus, courts have concluded that every payday that an employee receives less compensation than an alleged similarly-situated employee constitutes a separate accrual, or “trigger date,” for statute of limitations purposes.<sup>4</sup> Accordingly, courts have ruled that with the issuance of each paycheck that is alleged to be improperly lower than that of a similarly-situated employee, a new statute of limitations period begins to run.

The courts’ analysis regarding the statute of limitations in discrimination-based unequal pay claims is appropriate here with the grievant’s unequal pay claim; the grievant’s claim that she continues to be paid less than those who have less experience than she essentially involves an allegation of a series of discrete, individual wrongs, i.e., the issuance of each bi-monthly paycheck, after which a new statute of limitations (a new 30 calendar day period) begins to run. Because the grievant initiated her grievance within 30 calendar days of receiving an allegedly disparate paycheck, this Department finds that the grievance was timely initiated. However, if qualified for hearing, any relief from a hearing officer could extend no further back than the thirty calendar day period prior to the filing of this grievance.<sup>5</sup>

### CONCLUSION

For the reasons discussed above, this Department has determined that this grievance was filed within the 30-calendar day period and this therefore timely. By copy of this ruling, the grievant and the agency are advised that the grievant has five workdays from receipt of this ruling to advance or conclude her grievance. This

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<sup>2</sup> As a practical matter, because the grievant is claiming that her salary is less than newly promoted Lieutenants, it is difficult to conceive as to how she would have known in 2001 that her salary would be below those who would be hired in 2005.

<sup>3</sup> Pollis v. New School for Soc. Research, 132 F.3d 115, 119 (2<sup>nd</sup> Cir. 1997); *accord* Cardenas v. Massey, 269 F.3d 251, 257 (3<sup>rd</sup> Cir. 2001); Brinkley-Obu v. Hughes Training, Inc., 36 F.3d 336, 347 (4<sup>th</sup> Cir. 1994); Wagner v. NutraSweet Co., 95 F.3d 527, 534 (7<sup>th</sup> Cir. 1996); Calloway v. Partners Nat’l Health Plans, 986 F.2d 446, 448-49 (11<sup>th</sup> Cir. 1993).

<sup>4</sup> Brinkley-Obu v. Hughes Training Inc., 36 F.3d 336, 350 (4<sup>th</sup> Cir. 1994).

<sup>5</sup> In discrimination-based Equal Pay Act claims where each paycheck is viewed as a separate wrong, courts have held that back pay relief is available only for the designated two-year statute of limitations period immediately preceding the filing of such a claim. *See* Brinkley-Obu v. Hughes Training Inc., 36 F.3d at 351. In the context of a grievance, the designated statute of limitations period for filing is thirty calendar days. *See* Va. Code § 2.2-3003(C). Thus, by analogy, this Department has long ruled that in continuing violation claims that any relief under the grievance procedure, including any back pay, extends no further back than the thirty day period prior to the filing of the grievance.

Department's rulings on matters of compliance are final and nonappealable.<sup>6</sup> Further, this ruling only recognizes that this grievance was timely filed, and in no way reflects the substantive merits of the grievant's claim.

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Claudia T. Farr  
Director

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<sup>6</sup> Va. Code § 2.2-1001(5).