

Issue: Compliance/30-day rule; Ruling Date: July 25, 2005; Ruling #2006-1077;
Agency: Department of Corrections; Outcome: grievant not timely



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

In the matter of Department of Corrections
Ruling Number 2006-1077
July 25, 2005

The grievant has requested a compliance ruling in her June 27, 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 an Office Services Specialist. On May 5, 2005, the grievant was issued a counseling memorandum by her supervisor.¹ In response, she sent an e-mail to her supervisor on May 13, 2005 asking that the counseling memorandum be revised or withdrawn. The grievant alleges that on May 27, 2005, she was notified by her supervisor that the warden would be meeting with them later that day. The grievant states that she objected to the short notice, but her supervisor told her she did not need time to prepare. The grievant charges that at the meeting she was "taken to task for [her] actions, beginning with [her] e-mail message to [her supervisor]," and she alleges that the lack of time to prepare gave management a "very unfair advantage."

On June 27, 2005, after the meeting with her supervisor and the warden failed to result in her requested relief, the grievant initiated a grievance challenging the counseling memorandum. On June 30, 2005, the first-step respondent advised the grievant that her grievance was not in compliance with the grievance procedure because it was not initiated within the mandated 30-calendar day time period. The grievant appeals the agency's decision.

DISCUSSION

¹ The counseling memorandum was dated April 28, 2005, but it was not presented to the grievant until May 5, 2005.

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.² When an employee initiates a grievance beyond the 30-day period without just cause, the grievance is not in compliance with the grievance procedure and may be administratively closed.

In this case, the event that forms the basis of the grievance is the grievant's receipt of the counseling memorandum. The grievant acknowledged receipt of the counseling memorandum on May 5, 2005; therefore, she was required to initiate her grievance no later than June 4, 2005, 30 days after her receipt of the counseling memorandum. However, the grievant did not initiate her grievance until June 27, 2005. Thus, the only remaining issue is whether there was just cause for the delay.

The grievant first asserts that the 30-day period for filing her grievance did not begin to run when she received the counseling memorandum, but instead began when the agency refused to modify or rescind the counseling memorandum on May 27, 2005. Although the grievance process encourages informal discussion, the *Grievance Procedure Manual* expressly provides that "[e]ven when such discussions are ongoing . . . the written grievance must be initiated within 30 calendar days of the date that the employee knew, or should have known, of the event that formed the basis of the dispute."³ While the 30-day requirement may be extended if there is a written agreement between the parties to waive the requirement, no such agreement was reached here.⁴

The grievant also claims that she was unable to initiate her grievance prior to June 27th because her husband was hospitalized from June 2nd to June 6th, and she was on vacation from June 11th to June 20th.⁵ In addition, the grievant alleges that she delayed initiating her grievance because she had applied for a position as the warden's executive secretary on June 10th and was waiting to initiate her grievance until she learned whether she was scheduled for an interview. The grievant has offered no argument, however, that she was unable to initiate her grievance during the period from her receipt of the May 5th counseling memorandum to her husband's June 2nd illness or during the period immediately following his illness from June 7th to June 10th. Moreover, while we understand the grievant's argument that she delayed initiating her grievance because she

² Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4 (1).

³ *Grievance Procedure Manual* § 2.2.

⁴ We note that even if the 30-day period had begun to run when the agency refused to revoke or modify the counseling memorandum, the grievance would nevertheless be untimely, as it was initiated on the 31st calendar day following the May 27th meeting.

⁵ The grievant also suggests that her time to respond should be extended because the meeting on May 27th took place late in the day. This argument fails for two reasons. First, the events of May 27th are not relevant to the calculation of the 30-day period: as previously explained, the 30-day period began to run on May 5th, when the grievant received the counseling memorandum, not on May 27th, when she met with her supervisor and the warden. Moreover, the time that the event giving rise to the grievance occurred is immaterial: a grievant has 30 days from the challenged conduct to initiate a grievance, regardless of what time of the day, or night, the conduct took place.

was concerned that it would adversely impact her in the selection process of the executive secretary position, such a concern, without more, does not excuse the grievant's failure to timely initiate her grievance. We therefore conclude the grievant has failed to demonstrate just cause for her delay.

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.⁶

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⁶ Va. Code § 2.2-1001 (5).