

Issue: Compliance/30 day rule; underlying issues; insubordination, interference w/operations; unsatisfactory performance; Ruling Date: August 4, 2005; Ruling #2006-1082; Agency: Department of Mental Health, Mental Retardation and Substance Abuse Services; Outcome: grievant is out of compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Mental Health, Mental Retardation
And Substance Abuse Services
Ruling Number 2006-1082
August 4, 2005

The grievant has requested a compliance ruling in his June 24, 2005 grievance with the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS or the agency). The agency asserts that the grievant did not initiate his 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

Prior to his termination, the grievant was employed as a Human Care Service Worker with DMHMRSAS. On May 24, 2005, the grievant received a Group II Written Notice with termination. On June 23, 2005, the grievant contacted his immediate supervisor and requested to meet with her sometime that day. The grievant claims that he also informed his supervisor that he needed to turn in his grievance paperwork as it was the last day to initiate his grievance. The grievant's supervisor, on the other hand, alleges that the grievant said nothing about initiating a grievance. The grievant's supervisor informed the grievant that she was unavailable to meet with him on June 23rd and asked the grievant if they could meet the following day, June 24th. The grievant agreed and on June 24, 2005, the grievant met with his immediate supervisor and initiated his grievance challenging the Group II Written Notice with removal as improper and retaliatory.¹

¹ On October 26, 2004, the grievant was issued a Group III Written Notice with removal for client neglect. The grievant challenged the disciplinary action through the grievance process. The hearing officer reduced the Group III Written Notice with termination to a Group III Written Notice with 30 days suspension and ordered that the grievant be reinstated. The grievant believes that the May 24, 2005 Group II Written Notice with termination was issued in retaliation for his prior grievance.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date he 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-calendar 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 agency's issuance of a Group II Written Notice to the grievant. This Department has long held that in a grievance challenging a disciplinary action, the 30 calendar day timeframe begins on the date that management presents or delivers the Written Notice to the employee.³ The grievant received the Group II Written Notice on May 24, 2005 and thus should have initiated his grievance within thirty days of May 24, 2005, or by June 23, 2005. The grievant did not initiate his grievance until June 24, 2005, which was untimely. Thus, the only remaining issue is whether there was just cause for the delay.

The grievant claims that although he knew his grievance must be initiated by June 23, 2005, he did not initiate it on June 23rd because his immediate supervisor was unavailable to meet with him on that day to discuss his grievance and "turn in the paperwork to start the grievance process." This Department has long held, and the grievance procedure states, that waiting for the outcome of discussions with management does not constitute just cause for failure to initiate a grievance in a timely manner.⁴ Further, the grievant's responsibility to initiate his grievance within the mandated 30 calendar days did not cease merely because his immediate supervisor was unavailable or out of the office on the 30th day. The grievant could have timely initiated his grievance by mailing it on June 23, 2005.⁵ Moreover, it does not appear that the June 23rd conversation between the grievant and his immediate supervisor resulted in an agreement to extend the 30 calendar day time period. Rather, the supervisor appears to have been merely agreeing to meet with the grievant the following day. Accordingly, this Department cannot find that there was just cause for the grievant's delay in initiating his grievance challenging the Group II Written Notice.

CONCLUSION

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

³ See EDR Rulings 2000-003; 2000-082; 2002-001; 2002-118; 2003-147.

⁴ See *Grievance Procedure Manual* § 2.2 and EDR Rulings ##2004-600, 2002-159 and 2003-106.

⁵ Under the grievance procedure, a grievance may be initiated by mail with the post mark date serving as the initiation date. See *Grievance Procedure Manual* § 2.4.

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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Director

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⁶ Va. Code § 2.2-1001 (5).