

Issue: Compliance/30-day rule; Ruling Date: December 14, 2005; Ruling #2006-1201;
Agency: Department of Motor Vehicles; Outcome: grievant not in compliance.



Department of Employment Dispute Resolution
COMPLIANCE RULING OF THE DIRECTOR

In the matter of Department of Motor Vehicles
No. 2006-1201
December 14, 2005

The grievant has requested a ruling on whether her November 21, 2005 grievance with the Department of Motor Vehicles (DMV or agency) is in compliance with the grievance procedure. The agency asserts that the grievance does not comply with the grievance procedure because it was not timely initiated. For the reasons set forth below, the grievance is untimely and may be administratively closed.

FACTS

The grievant is employed as Customer Service Generalist, Senior. On October 21, 2005, she received a Group II Written Notice for purportedly failing to follow her supervisor's instructions, perform assigned work, or otherwise comply with established policy. On November 21, 2005, the grievant initiated a grievance challenging the Group II Notice. On November 29, 2005, the agency informed the grievant that her grievance was untimely.

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.

In this case, the event that forms the basis of her grievance is the agency's presentation of the Written Notice, which undisputedly occurred on October 21, 2005. Accordingly, the grievance should have been initiated within 30 calendar days of October 21, 2005. Because it was not initiated until November 21, 2005, 31 days after the Group II was issued, the grievance is untimely.² Thus, the only remaining issue is whether there was just cause for the delay.

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

² November 20th was a Sunday. However, this Department has long held that the fact that the 30th day falls on a weekend does not extend the 30-day deadline for initiating a grievance. See EDR Ruling Nos. 2003-118 and 99-204.

The grievant offers several reasons why she delayed in initiating her grievance. First, she asserts that she wanted to see an attorney regarding the Written Notice, and the agency denied her the opportunity to do so. Under state policy, agencies have considerable discretion regarding the granting of leave. More importantly, the grievance procedure is intended to be a process that does not require the assistance of legal counsel. While some employees may find that aid from a lawyer is helpful, it is not mandatory. In addition, if the grievant felt that she genuinely needed to meet with an attorney regarding the Written Notice she could have done so during non-work hours.

The grievant also claims that she had to undergo a medical procedure on November 11th and because she received general anesthesia, she was told “do not drive, operate machinery, make important decisions or sign papers until the day following the procedure.” This Department has long held that illness or impairment does not automatically constitute “just cause” for failure to meet procedural requirements. To the contrary, in most cases it will not.³ Illness may constitute just cause for delay only where there is evidence indicating that the physical or mental impairment was so debilitating that compliance with the grievance procedure was virtually impossible.⁴ In this case, documentation provided by the grievant indicates that she was likely precluded from making decisions and signing papers for no more than two days as a result of her medical procedure. This short period of incapacity is not nearly sufficient to constitute just cause.

Finally, the grievant notes that November 11th (a Friday) was a holiday. Just as the 30th day falling on a weekend does not constitute “just cause,” neither does the circumstance of a state holiday intervening during the 30 calendar day period.

CONCLUSION

For the reasons set forth above, this Department concludes that the grievant has failed to demonstrate just cause for her delay. The parties are advised that the grievance should be marked as concluded due to noncompliance and no further action is required. This Department’s rulings on matters of compliance are final and nonappealable.⁵

Claudia T. Farr
Director

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

³ See EDR Ruling No. 2003-154, 155.

⁴ *Id.* See also EDR Ruling No. 2005-1040.

⁵ See Va. Code § 2.2-1001(5).