

Issue: Compliance/30 day rule; Ruling Date: January 31, 2006; Ruling #2006-1256, 2006-1257; Agency: Department of Corrections; Outcome: grievances are timely



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of Department of Corrections  
Ruling Number 2006-1256, 2006-1257  
January 31, 2006

The grievant has requested a compliance ruling in her December 9, 2005 grievances with the Department of Corrections (DOC or the agency).<sup>1</sup> The agency asserts that the grievant did not initiate her grievances within the 30-calendar day time period required by the grievance procedure. For the reasons discussed below, these grievances are timely.

FACTS

The grievant is employed as a Case Management Counselor. On November 9, 2005, the grievant was presented with a Group II Written Notice with suspension from November 10, 2005 through November 16, 2005, and a Group III Written Notice with suspension from November 17, 2005 through December 21, 2005. The grievant initiated, via U.S. Mail, two grievances on December 9, 2005 challenging the Written Notices and suspension. Instead of mailing the grievance to her immediate supervisor or the Second-Step Respondent, the grievant addressed and mailed her grievance to the agency's Regional Employee Ombudsman.

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>2</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. Further, the initiation date of a mailed grievance is the postmark or mail date.<sup>3</sup> In addition, this Department has consistently held that a grievance initiated in a timely manner but with the wrong management representative will not bar a grievance for noncompliance.<sup>4</sup>

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<sup>1</sup> The grievant has requested qualification of her December 9<sup>th</sup> grievances with this Department. However, because the agency has closed the grievances because they deemed them untimely, this Department will treat the grievant's ruling requests as a compliance ruling.

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

<sup>3</sup> *Grievance Procedure Manual*, § 2.4.

<sup>4</sup> EDR Rulings 99-007; 99-011; 99-171; 2000-008; 2001-195; 2001-230; 2004-645; 2006-1114.

In this case, the event that forms the basis of the grievance is the agency's issuance of Group Written Notices 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.<sup>5</sup> The grievant received her Group Notices on November 9, 2005 and thus should have initiated her grievance within thirty days of November 9, 2005, or by December 9, 2005. The grievant mailed her grievance on December 9, 2005, which, as noted above, is considered the date of initiation.

The agency's primary objection to the grievance appears to be based on the grievant's decision to mail her grievance to the regional Ombudsman instead of her immediate supervisor or Second-Step Respondent. However, as recognized above, this Department has long held that that a grievance initiated in a timely manner but with the wrong management representative will not bar a grievance for noncompliance. In this case, the grievant has provided evidence that she mailed her grievance to the Ombudsman on December 9, 2005. The Ombudsman forwarded the grievances to the Second-Step Respondent, the Warden, on December 15, 2005. Based on the facts of this case, for purposes of deciding whether the grievance was timely initiated, this Department will not bar the grievance on the basis of non-compliance merely because it was initiated with Ombudsman instead of the immediate supervisor or Warden.<sup>6</sup>

### CONCLUSION

The Second-Step Respondent is directed to arrange for a second-step meeting in accordance with the *Grievance Procedure Manual* within 5-workdays of receipt of this ruling to address the grievant's two December 9, 2006 grievances. This Department's rulings on matters of compliance are final and nonappealable.<sup>7</sup>

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Claudia T. Farr  
Director

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

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<sup>5</sup> See EDR Rulings 2000-003; 2000-082; 2002-001; 2002-118; 2003-147; 2006-1114.

<sup>6</sup> Because the grievant was challenging two suspensions that resulted in pay losses, the grievant was entitled to use the expedited grievance process which allows an employee to begin her grievance at the second step and skip the third. See *Grievance Procedure Manual*, § 2.4

<sup>7</sup> Va. Code § 2.2-1001 (5).