Issue: Compliance/30-day rule; VALORS issue; Ruling Date: March 31, 2006; Ruling #2006-1320; Agency: Department of Corrections; Outcome: grievance out of compliance.

COMMONWEALTH of VIRGINIA

Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR
In the matter of Department of Corrections
Ruling Number 2006-1320
March 31, 2006

The grievant has requested a compliance ruling regarding his January 24, 2006 grievance with the Department of Corrections (DOC or the agency).[1] The agency asserts that the grievant did not initiate his grievance in a timely manner (within the 30-calendar-day time period) as required by the grievance procedure. For the reasons set forth below, the grievance is ruled to be out of compliance with the grievance procedure.

FACTS

In 1999, the General Assembly passed the Virginia Law Officers' Retirement System (VALORS).[2] "Correctional officers," as the term is defined in Va. Code § 53.1-1, were included among the categories of employees eligible for VALORS benefits.[3] Section 53.1-1 defines "correctional officer" to include a "duly sworn employee of the Department of Corrections whose normal duties relate to maintaining immediate control, supervisor and custody of prisoners confined in any state correctional facility."[4] DOC has interpreted this provision to include "all the uniformed Corrections Officer Series; Corrections Officer, Corrections Officer Senior, Corrections Sergeant, Corrections Lieutenant, Corrections Captain, and Corrections Major."

The grievant is employed as a Carpenter Supervisor. On January 24, 2006, he initiated a grievance challenging his exclusion from VALORS coverage. The grievant seeks, as relief through his grievance, "to be covered" under VALORS. The grievance was unresolved during management resolution steps and proceeded to qualification. During the qualification review, the agency head asserted that the grievance was not timely.

DISCUSSION

[1] As the grievance was at the qualification stage when the agency head determined it was untimely, the grievant also seeks a qualification ruling. Because we find that the grievance was not in compliance with the grievance procedure, we do not rule on the issue of qualification.
[2] Va. Code § 51.1-211 *et seq.*
[3] Va. Code § 51.1-212.
[4] Va. Code § 53.1-1.

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.[5] 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. The agency asserts that the grievant has been aware since July 15, 1999 that his position was not covered by VALORS, and that his grievance is therefore untimely.

The agency is correct that the grievant seeks to challenge the statutory exclusion of his position from VALORS coverage—an event occurring in 1999 when the statute was enacted. However, the grievant was not "directly and personally" impacted by the exclusion in 1999 because he was not ready to retire.[6] As a result, he could not grieve the exclusion of his position at the time the exclusion occurred. For this reason, the grievant's claim is not barred by the 30-day rule.

Although the grievant's claim is not time-barred, it is premature. The grievant does not assert that he has applied for VALORS benefits and been rejected: rather, he seeks to use the grievance procedure to dispute an expected future event. Because the grievant challenges a future, rather than a present, denial of benefits, his grievance does not pertain directly and personally to his employment. Accordingly, the grievance fails to comply with the grievance procedure and may be administratively closed.[7] However, because his present grievance is being closed as premature, the grievant may initiate a new grievance challenging any denial of benefits when and if such denial occurs.

We note, however, that even if the grievance were in compliance with the grievance procedure, it nevertheless would not qualify for hearing. The grievant does not appear to dispute that his position is not presently covered by VALORS. Instead, he appears to challenge the legislature's decision to limit coverage to duly sworn DOC employees "whose normal duties relate to maintaining immediate control, supervisor and custody of prisoners." In an attachment to his Grievance Form A, the grievant explained: "We feel that the lack of information and the incorrect information that the General Assembly had at the time VALORS passed is the reason VALORS was not given to maintenance and farm personnel. We feel this decision was <u>discriminating</u> against Maintenance staff."

The grievant is, in essence, disputing the contents of the VALORS program, not its application. He is not arguing that the program is *applied* unfairly, rather, he is arguing that the program *is* unfair, because he disagrees with the General Assembly's

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

[6] *See* EDR Ruling No. 2002-144. Under the grievance procedure an employee's grievance "must . . . pertain directly and personally to the employee's own employment in a position with access to the grievance procedure." *Grievance Procedure Manual* § 2.4. The grievant does not assert that he has applied for VALORS coverage and been refused. Moreover, the agency states that it is not aware of any application for retirement or VALORS coverage (other than the grievance) by the grievant.

[7] *Grievance Procedure Manual* § 2.4.

determination of which employees should be eligible. However, the grievance procedure expressly excludes challenges to the "[c]ontents of statutes, ordinances, personnel policies, procedures, rules, and regulations" from qualification, unless there is some support for a claim of discrimination (as that term is defined in the *Grievance Procedure Manual*), retaliation, or discipline.[8] The grievant asserts no such claim in this instance.

This Department's rulings on matters of compliance are final and nonappealable.[9]

Claudia T. Farr
Director

Gretchen M. White
EDR Consultant

[8] *Grievance Procedure Manual* § 4.1. The *Grievance Procedure Manual* defines discrimination to include "[d]ifferent or hostile treatment based on race, color, religion, political affiliation, age, disability, national origin, or sex." *Id.* at § 9.
[9] Va. Code § 2.2-1001(5).