

Issue: Compliance/30 day rule of grievance procedure; Ruling Date: June 22, 2006; Ruling #'s 2006-1349, 2006-1350; Agency: Department of Health; Outcome: #1349 grievant not in compliance, #1350 grievant in compliance

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

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Health  
Ruling Number 2006-1349 and 2006-1350  
June 22, 2006

The grievant has requested a ruling on whether two April 10, 2006 grievances he initiated with the Department of Health (VDH or agency) are in compliance with the grievance procedure. The agency asserts that both grievances are out of compliance with the grievance procedure because they were not timely initiated and request relief that cannot be granted.<sup>1</sup>

FACTS

The grievant is employed as a General Administration Manager I with VDH. On March 10, 2006, the grievant was issued a Notice of Improvement Needed/Substandard Performance (the Notice). In response, on March 17, 2006, the grievant submitted to management a written response/appeal to the Notice.

The grievant subsequently initiated two grievances. The first grievance (Grievance #1) was initiated on April 10, 2006 and challenges the Notice as unwarranted. In his second grievance (Grievance #2), also initiated on April 10<sup>th</sup>, the grievant claims that the agency misapplied policy by failing to provide a written response to his March 17<sup>th</sup> appeal. The first step-respondent administratively closed both Grievance #1 and Grievance #2 for noncompliance with the 30 calendar day requirement of the grievance procedure. Further, in his response, the first step-respondent addressed the merits of each grievance and determined that both Grievance #1 and Grievance #2 request relief that cannot be granted.

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.<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.

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<sup>1</sup> In addition, the first step-respondent claims that the grievant failed to comply with the grievance procedure because he (1) incorrectly used the expedited version of Form A; and (2) submitted the Form A's to the wrong step-respondent. However, in an April 28, 2006 letter to this Department, the EEO/Employment Relations Manager for VDH rescinded these two allegations of noncompliance. As such, these noncompliance issues will not be addressed in this ruling.

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

### Grievance #1

The event that forms the basis of Grievance #1 is the agency's presentation of the Notice, which undisputedly occurred on March 10, 2006. Accordingly, the grievance should have been initiated within 30 calendar days of March 10, 2006. Because it was not initiated until April 10, 2006, 31 days after the Notice was issued, the grievance is untimely. Thus, the only remaining issue is whether there was just cause for the delay.

In support of his contention that there was just cause for his delay, the grievant claims that (1) the 30<sup>th</sup> calendar day fell on a Sunday; and (2) his supervisor deliberately told him that the Notice was "not subject to the grievance process."

With regard to the grievant's first contention, this Department has consistently applied the 30-day rule strictly and has long held that the fact that the 30<sup>th</sup> day falls on a weekend does not extend the 30-day deadline for initiating a grievance.<sup>3</sup> Furthermore, the grievant's reliance upon the supervisor's alleged statement in this case would not amount to just cause. This Department has long held that it is incumbent upon each employee to know his rights and obligations under the grievance procedure<sup>4</sup> and that lack of knowledge about the grievance procedure and its requirements does not constitute just cause for failure to initiate a grievance in a timely manner.<sup>5</sup> Moreover, it appears that the grievant was aware, prior to the filing deadline, that his supervisor's alleged statement about the Notice not being subject to the grievance procedure may well have been inaccurate.<sup>6</sup>

For the reasons set forth above, this Department concludes that the grievant has failed to demonstrate just cause for his delay in initiating Grievance #1. The parties are advised that Grievance #1 should be marked as concluded due to noncompliance and no further action is required.

### Grievance #2

The event that forms the basis of Grievance #2 is the agency's alleged failure to provide a written response to the grievant's March 17, 2006 response/appeal of his Notice of Improvement Needed/Substandard Performance.<sup>7</sup> This grievance is timely. The agency could have issued (but did not) a written response no earlier than March 17<sup>th</sup>, the date of the grievant's appeal. The

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<sup>3</sup> See EDR Ruling Nos. 2006-1201, 2003-118 and 99-204.

<sup>4</sup> EDR Rulings 2000-010; 2000-097; 2000-139; 2001-024; 2001-085; 2001-212; 2002-057.

<sup>5</sup> EDR Rulings 2000-139; 2001-212; 2002-057.

<sup>6</sup> During this Department's investigation, the grievant indicated that the District's Personnel Assistant had instructed his supervisor that the Notice was subject to the grievance procedure, and that he (the grievant) had researched the issue prior to the filing deadline.

<sup>7</sup> The agency claims that the policy cited by the grievant as requiring a written response from the agency to his appeal is inapplicable in this case. The legitimacy of the agency's claim will not be addressed in this ruling because where the disputed event forms the basis of the grievance, as here, this Department avoids, where possible, engaging in fact-finding on the merits of the grievance when called upon to address a matter of compliance. Cf. EDR Ruling 2001-189 and 2006-1299.

grievant's April 10, 2006 grievance was initiated well within 30 calendar days of March 17<sup>th</sup>.<sup>8</sup> It should be noted, however, that to the extent that Grievance #2 contains a challenge to the legitimacy of the Notice itself, as stated above, such a challenge is untimely and may not proceed through the management resolution steps without the agency's consent.<sup>9</sup>

This Department's rulings on matters of compliance are final and nonappealable.<sup>10</sup>

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Claudia T. Farr  
Director

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<sup>8</sup> Grievance #2 could also have been timely as a continuing violation claim. *Pollis v. New School for Soc. Research*, 132 F.3d 115, 119 (2<sup>nd</sup> Cir. 1997); *Brinkley-Obu v. Hughes Training, Inc.*, 36 F.3d 336, 347 (4<sup>th</sup> Cir. 1994); *Wagner v. NutraSweet Co.*, 95 F.3d 527, 534 (7<sup>th</sup> Cir. 1996); *Calloway v. Partners Nat'l Health Plans*, 986 F.2d 446, 448-49 (11<sup>th</sup> Cir. 1993).

<sup>9</sup> See *Grievance Procedure Manual* § 2.4. We note, however, that this ruling does not prohibit the agency's ability to rescind the Notice if it so chooses. This ruling merely finds that the grievant failed to timely challenge the merits of the Notice and as such, he cannot pursue a claim on this issue through the grievance process.

<sup>10</sup> See Va. Code § 2.2-1001(5).