

Issue: Compliance/30-calendar day; Ruling Date: June 26, 2006; Ruling #2006-1373,
Agency: Department of Taxation; Outcome: grievance is timely



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Taxation
Ruling Number 2006-1373
June 26, 2006

The grievant has requested a compliance ruling in her May 17, 2006 grievance with the Department of Taxation (the agency). The agency asserts that the grievant did not initiate her grievance within the 30-calendar day time period required by the grievance procedure. For the reasons discussed below, this grievance is timely.

FACTS

The grievant is employed as an Office Service Specialist. On May 17, 2006, she initiated, via U.S. Mail, a grievance challenging her alleged nonselection for a Collections Representative position. The grievant states that she mailed her grievance both to the agency's Human Resources Department and to the agency's Commissioner. The grievant has presented a copy of the envelope mailed to the Commissioner's office, which shows a postmarked date of May 17, 2006. The grievant states that she mailed the grievance to the Human Resources Department the same day, but Human Resources apparently did not retain the envelope.

By letter dated May 24, 2006, the agency advised the grievant that it was administratively closing her grievance for noncompliance, on the ground that the grievance was untimely. The grievant has appealed the agency's action to this Department.

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. Further, the initiation date of a mailed grievance is the postmark or mail date.²

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

² *Grievance Procedure Manual* § 2.4.

In this case, the event that forms the basis of the grievance is the grievant's alleged nonselection for the Collections Representative position. The grievant asserts that her grievance arose on April 17, 2006, when she states she was told of her nonselection. The agency apparently does not challenge this assertion.³ Thus, the grievant had thirty calendar days, or until May 17, 2006, to file a grievance.

As previously noted, the grievant has presented evidence showing that she mailed a copy of her grievance to the Commissioner's office on May 17, 2005.⁴ Because the date that a grievance is mailed is considered the date of initiation, we find the grievant initiated her grievance within the 30-day period. 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.⁵ Therefore, that the grievant initiated her grievance with the agency Commissioner, rather than the first-step respondent (as contemplated by the grievance procedure), is immaterial.

CONCLUSION

For the reasons discussed above, this Department has determined that this grievance was filed within the 30-calendar-day period. By copy of this ruling, the parties are advised that within five workdays of the receipt of this ruling, the first-step respondent must respond to the grievance.⁶ This Department's rulings on matters of compliance are final and nonappealable.⁷

Claudia T. Farr
Director

³ In its May 24, 2006 letter advising the grievant that her grievance was being administratively closed for noncompliance, the agency states, "In accordance with the Department of Employment Dispute Resolution guidelines, your grievance must be initiated within 30 calendar days of an event. *This means that your grievance was due on May 17, 2006.*" (emphasis added)

⁴ As previously noted, the grievant asserts that she also mailed the grievance to the Human Resources Department on the same day, but is unable to verify that assertion, as the envelope has apparently been destroyed. We therefore will assume, for the limited purposes of this ruling, that the grievant only mailed a copy of her grievance to the Commissioner on May 17th, and that her grievance was not also mailed to the Human Resources Department on or before that date.

⁵ EDR Rulings 99-007; 99-011; 99-171; 2000-008; 2001-195; 2001-230; 2004-645; 2006-1114.

⁶ The grievant indicates on her Grievance Form A that she did not present the grievance to her immediate supervisor because of alleged discrimination or retaliation. In its May 24th letter, the agency notes that the "grievance information did not show evidence of discrimination or retaliation on the basis of race, color, gender, age, national origin, religion, political affiliation or disabilities." However, as this Department avoids fact-finding on the subject matter and/or merits of a grievance prior to the qualification stage, the showing required by a grievant to bypass his or her immediate supervisor is minimal, and may generally be satisfied by checking the appropriate boxes on the Grievance Form A or by making an allegation of discrimination or retaliation on the Form A or an attachment. *See generally* EDR Ruling 2006-1299.

⁷ Va. Code § 2.2-1001(5).