

Issue: Compliance/Grievance Procedure/30-day rule; Ruling Date: April 10, 2007; Ruling #2007-1596; Agency: Department of Health; Outcome: Grievant not in compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Health
Ruling Number 2007-1596
April 10, 2007

The grievant has requested a compliance ruling in her January 10, 2007 grievance with the Department of Health (VDH or 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 untimely without just cause and may be administratively closed.

FACTS

The grievant is employed as an Office Services Supervisor. On November 28, 2006, the grievant was issued a memorandum noting the agency's intent to take disciplinary action against her. On December 1, 2006, the grievant responded in writing to the allegations set forth in the November 28th memorandum. Thereafter, on December 7, 2006, the grievant was issued a Group II Written Notice with 5 day suspension for workplace harassment, abuse of supervisory authority and state time, use of obscene or abusive language and disruptive behavior.

The grievant challenged the November 28th memorandum and the December 7th written notice by initiating an expedited grievance on January 10, 2007. On January 22, 2007, the second-step respondent advised the grievant that her grievance was not in compliance with the grievance procedure because it was not initiated within the mandated 30-calendar day time period. The second-step response further stated: "[i]f you would like to appeal this decision, you must forward your grievance to request a qualification for hearing to [VDH Commissioner], within five days of your receipt this [sic] response." The grievant advanced her grievance to the agency head for qualification on February 1, 2007. In a February 8, 2007 decision, the agency head determined that the grievant was out of compliance with the 30-calendar day time period for initiating a grievance and advised the grievant that she could appeal his determination to this Department. The grievant now seeks a compliance ruling from 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-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 the grievance is the grievant's receipt of the November 28th memorandum and the December 7th Written Notice. The grievant appears to have received the memorandum on November 28th; therefore, she was required to initiate a grievance with regard to this issue no later than December 28, 2006, 30 days after her receipt of the November 28th memorandum. Likewise, the grievant appears to have received the Group II Written Notice on December 7th; therefore, she was required to initiate a grievance with regard to this issue no later than January 6, 2007, 30 days after her receipt of the written notice. However, the grievant did not initiate her grievance challenging the memorandum and the written notice until January 10, 2007. Thus, the only remaining issue is whether there was just cause for the delay.

In this case, the grievant asserts that she was suspended twice and was experiencing "stress" during the 30 calendar day period following the November 28th memorandum and the December 7th written notice. Additionally, the grievant asserts that the holidays were a factor in her late initiation of her grievance. Being absent from work due to suspension and state holidays intervening during the 30 calendar day period do not constitute "just cause" for failure to initiate a grievance during the mandated time frame.² Additionally, 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. That does not appear to be the case here as the grievant concedes that the stress she was experiencing was not of such a nature as to cause her to be absent from work as a result. This Department therefore concludes that the grievant has failed to demonstrate just cause for her delay.

CONCLUSION

For the reasons discussed above, this Department has determined that this grievance was not filed within the 30-calendar-day period and is therefore untimely. By copy of this ruling, the grievant and the agency are advised that the agency may administratively close this grievance. This Department's rulings on matters of compliance are final and nonappealable.⁴

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

² See e.g., EDR Ruling #2006-1201.

³ See EDR Ruling No. 2003-154, 155.

⁴ Va. Code § 2.2-1001 (5).

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