

Issue: Compliance: Grievance Procedure – 30 Day Rule: Ruling Date: June 6, 2007; Ruling #2007-1606; Agency: Department of Corrections; Outcome: Grievant in compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Corrections
No. 2007-1606
June 6, 2007

The grievant has requested a ruling on whether his March 13, 2007 grievance with the Department of Corrections (the agency) is in compliance with the grievance procedure. The agency asserts that the grievance was not timely initiated. For the reasons set forth below, this Department determines that the grievance is timely and may proceed.

FACTS

The grievant previously initiated a grievance on January 25, 2007, in which he alleged that a supervisor was harassing him and requested transfer away from that supervisor. The facts giving rise to the January 25, 2007 grievance concern an incident that led to the issuance of a Group I Written Notice to the grievant that same day. The grievant states that he initiated the January 25, 2007 grievance after receiving the Written Notice.

At the second step meeting for the January 25, 2007 grievance, the grievant stated that he wanted the Group I Written Notice removed from his file even though he had neglected to include any specific reference to the Written Notice on his Form A. This second step meeting occurred on February 24, 2007, exactly thirty days after the issuance of the Written Notice. The second step response, dated March 2, 2007, indicated that the grievant had not included the removal of the Written Notice in his requested relief on the Form A, so on that basis, the request was denied.

On March 5, 2007, after receiving the second step response and, reportedly, after a member of the facility's human resources staff told him that the Written Notice would be removed from his file anyway because the supervisor and a warden wanted it removed, the grievant voluntarily concluded the January 25, 2007 grievance. According to the grievant, another member of the agency's human resources department later said the agency was not able to remove the grievance from the grievant's file after he concluded the grievance.

During investigation by this Department, an EDR consultant sought to speak with the member of the facility's human resources staff who reportedly told the grievant that the Written Notice would be removed from his file even though it was not relief available to him pursuant to his grievance. Repeated calls and requests to speak with this individual were not returned. Consequently, this Department has no choice but to assume, for purposes of this ruling only, that the grievant's assertion that a member of the facility's human resources staff told him the Written Notice would be removed from his file anyway is a true statement of fact.

After failing to get any further explanation or resolution from agency management and human resources, the grievant initiated a second grievance on March 13, 2007, explicitly challenging the Written Notice. The agency responded that this grievance was not timely. The grievant now requests a ruling from this Department.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date he or 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.

Here, the event that forms the basis of the grievance is the agency's issuance of the Written Notice. 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.² The grievant received the Group I Written Notice on January 25, 2007, and, thus, should have initiated his second grievance specifically referencing the Written Notice within 30 days, i.e., no later than February 24, 2007. The grievant did not initiate his grievance until March 13, 2007, which was 47 days after the Written Notice was issued and, thus, untimely. However, the grievance may nevertheless proceed if there was just cause for the delay.

Just cause exists under the particular facts of this case. Here, the grievant actually presented an initial grievance to the agency related directly to the very event that was the subject of the Written Notice on January 25, 2007. The grievance appears to challenge the agency's versions of the facts and circumstances that led to the issuance of the Written Notice. The grievance simply fails to seek as relief the removal of the Written Notice.³ As such, the grievant had sufficiently raised the issue of the Written Notice in his January 25, 2007 grievance. Even though he did not specifically reference the Written Notice in the Form A, the grievant and the

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

² E.g., EDR Ruling No. 2005-986; EDR Ruling No. 2003-147; EDR Ruling No. 2002-118; EDR Ruling No. 2002-001.

³ The omission of a specific request for relief -- for example, to have the Written Notice removed -- does not render the grievance defective under the grievance procedure. Hearing officers are "not limited to the specific relief requested by the employee on the Form A, as long as the relief granted is consistent with law and policy." *Rules for Conducting Grievance Hearings* § VI(A).

agency addressed the Written Notice during the second step meeting. Under the unique facts of this case, this Department concludes that the grievant presented the issue to the agency in a timely manner on January 25th.

Significantly as well, the grievant concluded the January 25, 2007 grievance based on the facility's human resources staff informing him that although the agency would not rescind the Written Notice in response to the January 25, 2007 grievance (because the Form A had not expressly contested the Written Notice), the Written Notice would be removed from his file anyway because a warden and the issuing supervisor wanted it rescinded.⁴ It was only after he closed the grievance, however, that a different member of the agency's human resources staff informed him that the Written Notice could not be removed from his file.⁵

In light of all the above, this Department rules that the grievant had just cause to initiate his March 13, 2007 grievance beyond the 30-day time limit. Consequently, the March 13, 2007 grievance must be allowed to proceed.

CONCLUSION

For the reasons discussed above, this Department has determined that just cause exists for the grievant's delay in initiating his March 13, 2007 grievance. 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. This Department's rulings on matters of compliance are final and nonappealable.⁶

Claudia T. Farr
Director

⁴ A "Written Notice may be removed from an employee's personnel file if the agency modifies or vacates its disciplinary action." DHRM Policy No. 1.60, *Standards of Conduct*, p. 12 of 20.

⁵ Because the grievant concluded the January 25, 2007 grievance in this manner, the appropriate result would have been to reopen that grievance based on a compliance ruling request from the grievant. While the grievant could have chosen to pursue such a compliance ruling, he instead chose to file a new grievance. Indeed, a member of agency human resources purportedly told him to file the second grievance. While it may have been more appropriate to request a compliance ruling, the initiation of the second grievance has effectively raised the same issues.

⁶ Va. Code § 2.2-1001(5).