

Issue: Compliance: Grievance Procedure – 30 Day Rule; Ruling Date: May 7, 2007;
Ruling #2007-1624; Agency: Virginia Department of Health; Outcome: Grievant not in
compliance.



Department of Employment Dispute Resolution

COMPLIANCE RULING OF THE DIRECTOR

In the matter of Department of Health

No. 2007-1624

May 7, 2007

The grievant has requested a ruling on whether he filed his March 20, 2007 grievance with the Department of Health (the agency) in compliance with the grievance procedure. The agency asserts that the grievance was not timely initiated. For the reasons set forth below, the grievance is untimely and may be administratively closed.

FACTS

Effective January 17, 2007, the grievant was demoted. According to the agency, the grievant was notified about this demotion in a meeting on January 18, 2007. In addition, he was given a written memo explaining the agency's action in the meeting. Subsequently, on January 23, 2007, the grievant allegedly received an Employee Work Profile (EWP) that reflected his new position. The grievant initiated a grievance challenging the demotion on March 20, 2007.¹ The agency asserts that the grievance was untimely. The grievant has now sought a ruling from this Department to determine whether he was compliant with the grievance procedure. The grievant claims he did not know he was being demoted until he noticed that his paycheck in mid-February was lower than normal.

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.² 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.

¹ This date appears on the grievant's signature line on the Form A, although the grievance was stamped as received by the agency on March 22, 2007. For purposes of this ruling only, it is assumed the grievant initiated the grievance by hand delivery or mail on March 20, 2007. The grievant has not submitted evidence to support March 20, 2007 as the actual initiation date, but the difference of two days is not determinative to the outcome of this ruling.

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

In this case, the event that forms the basis of the grievance is a demotion. Consequently, the 30-calendar day timeframe begins on the date that management presented the grievant with notice of this demotion. The grievant claims he was never officially told he was being demoted. The grievant asserts that he discovered the demotion when he received his mid-February paycheck, which was smaller than normal. However, the agency has presented contemporaneous evidence that the grievant was given a memo detailing his demotion during a meeting on January 18, 2007 when the demotion was discussed.³ The two members of agency management that attended this meeting with the grievant wrote e-mails on the day of the meeting recounting what took place. Both e-mails indicate that the grievant was informed of his demotion and pay decrease and given the memo reflecting the same. Based on these documents, this Department determines that the grievant was on notice of his demotion on January 18, 2007. The terms of the "Notice of Demotion" are clear that the grievant was being demoted effective that date with a 5% pay decrease. The agency's contemporaneous e-mails regarding the meeting further discount the grievant's claim that he was not given notice of the demotion.

Consequently, the grievant should have initiated his grievance by February 17, 2007. However, the grievant did not initiate his grievance until more than 60 days after he received notice of the demotion and was, thus, untimely. Moreover, the grievant has provided no evidence of just cause. Indeed, the grievant's argument is that he never received actual notice of the demotion. The grievant's statement is contradicted by the agency's contemporaneous evidence. Based on the foregoing, this Department cannot conclude that just cause existed for the grievant's failure to file the grievance within the requisite 30-day period. Moreover, the grievant "bears the burden of establishing that the grievance was timely initiated."⁴ The grievant has not met his burden in this case. As such, the March 20, 2007 grievance may be administratively closed as untimely.

CONCLUSION

For the reasons set forth above, this Department concludes that the grievant has failed to demonstrate just cause for his delay. The parties are advised that the grievance should be marked as concluded due to noncompliance and no further action is required. This Department's rulings on matters of compliance are final and nonappealable.⁵

Claudia T. Farr
Director

³ The terms of this memo clearly indicate that the grievant was being demoted. Indeed, the memo is titled "Notice of Demotion."

⁴ *Grievance Procedure Manual* § 2.4.

⁵ See Va. Code § 2.2-1001(5).