

Issue: Compliance: Grievance Procedure – 30 Day Rule: Ruling Date: May 29, 2007; Ruling # 2007-1653; Agency: Department of Motor Vehicles; Outcome: Grievant not in compliance.



Department of Employment Dispute Resolution

COMPLIANCE RULING OF THE DIRECTOR

In the matter of Department of Motor Vehicles

No. 2007-1653

May 29, 2007

The grievant has requested a ruling on whether her February 9, 2007 grievance with the Department of Motor Vehicles (the agency) is in compliance with the grievance procedure. The agency asserts that the grievance does not comply with the grievance procedure because it was not initiated timely. For the reasons set forth below, the grievance is untimely and may be administratively closed.

FACTS

After allegedly enduring “mistreatment or degradation” by the branch manager, the grievant left an unsigned “proposed resignation letter” on the assistant manager’s desk on January 8, 2007. The following day, the branch manager allegedly discovered this letter on the assistant manager’s desk and spoke with the grievant. The grievant explained that she did not intend to resign and wrote a memo to the branch manager to this effect. However, the branch manager decided to accept the grievant’s resignation letter and terminated her employment on January 9, 2007.

On February 9, 2007,¹ the grievant initiated this grievance to challenge the alleged involuntary resignation/termination. In her attachments, the grievant discusses the circumstances that led to her decision to draft the “proposed resignation letter.” According to the grievant, she had recently received two Written Notices, one for receiving an unsolicited personal phone call at work, and another for receiving an unsolicited facsimile transmission at work. The grievant also cites “disparag[ing] treatment” by the branch manager allegedly based on her race and gender. She alleges complaining about this course of conduct to a district manager. Evidence the grievant identifies in support of her contention includes:

- A. The branch manager “involuntar[ily] transferred ninety percent of black females when she arrived;”

¹ This is the date the grievant mailed her grievance to the agency. Pursuant to the grievance procedure, “for purposes of establishing when a mailed grievance was initiated, the postmark date is considered the initiation date.” *Grievance Procedure Manual* § 2.4.

- B. Two employees were “involuntarily transferred when they supported a black [employee] in a Workmen’s Compensation hearing;”
- C. “Grievant was personally told by [the branch manager] that if she didn’t like working at the DMV she could always go to work at Burger King;” and
- D. “Caucasian men are allowed extraordinary freedom (ex. [w]alking around the building on a cell phone and smoking.”

At the second resolution step, the agency informed the grievant that her grievance was untimely. The agency head affirmed the agency’s position after the grievant requested reconsideration of the determination. The grievant has now asked for 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.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.

In this case, the event that forms the basis of her grievance is the alleged involuntary resignation.³ The grievant’s employment ended on January 9, 2007. Therefore, she should have initiated her grievance within 30 days, i.e., no later than February 8, 2007. The grievant did not initiate her grievance until February 9, 2007, which was one day after her separation from employment and, thus, untimely. The only remaining issue is whether there was just cause for the delay.

The grievant has submitted a letter from her doctor indicating that she is being treated for anxiety and depression. The grievant appears to assert that she may have been unable to file her grievance timely because of her medical condition. However, 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.⁴ 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.⁵ There is no evidence that the grievant was incapacitated to the point that she was unable to protect her grievance rights at any time during the 30-day period following the alleged involuntary resignation. Indeed, the grievant has stated that she never looked at a calendar to

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

³ Employees who voluntarily resign their employment may not have access to the grievance process, depending upon the surrounding circumstances such as the nature of their claim or when the grievance is initiated. *See* EDR Ruling 2007-1458. For purposes of this ruling, this Department will assume that the grievant’s separation from employment was an involuntary resignation.

⁴ *See* EDR Ruling No. 2006-1201; EDR Ruling Nos. 2003-154, 155.

⁵ *Id.*; *see also* EDR Ruling No. 2005-1040.

calculate the 30 days and failed to compute the time period properly because of January having 31 days rather than 30.

Based on the foregoing, this Department cannot conclude that just cause existed for the grievant's failure to file the grievance within the 30-day period following her separation from employment. Because she did not initiate the grievance in a timely manner, the February 9, 2007 grievance may be administratively closed.

Because the grievant is alleging detrimental treatment by the agency potentially on account of her race and gender, the grievant might be able to seek the assistance of the Office of Equal Employment Services (OEES) within the Department of Human Resource Management. The OEES can be contacted at 1-800-533-1414. In addition, this Department takes this opportunity to point out to the agency that the grievant's allegations are quite serious. The grievant's failure to initiate a timely grievance does not prevent the agency from investigating these allegations internally, if it has not already done so. Such an investigation should be considered given the seriousness of the conduct alleged by the grievant.

CONCLUSION

For the reasons set forth above, this Department concludes that the grievant has failed to demonstrate just cause for her 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.⁶

Claudia T. Farr
Director

⁶ See Va. Code § 2.2-1001(5).