

Issue: Compliance: Grievance Procedure – 30 Day Rule; Ruling Date: May 31, 2007;  
Ruling #2007-1686; Agency: Virginia Department of Transportation; Outcome: Grievant  
in compliance.



*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*

**COMPLIANCE RULING OF DIRECTOR**

In the matter of the Virginia Department of Transportation  
Ruling Number 2007-1686  
May 31, 2007

The grievant has requested a compliance ruling in her April 21, 2007 grievance with the Virginia Department of Transportation (VDOT or the agency).<sup>1</sup> 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, the grievance is timely.

FACTS

The grievant is employed as an Executive Secretary. On March 23, 2007, the grievant was issued a disciplinary action. On April 21, 2007, the grievant attempted to initiate a grievance by mailing her Grievance Form A to this Department. It was returned to the grievant, who subsequently forwarded it to the agency where it was received on May 8, 2007. The agency contends that the grievance is untimely because it was not received by the agency within 30 calendar days of her receipt of the disciplinary action.

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.<sup>2</sup> 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—the receipt date is immaterial.<sup>3</sup> In addition, this Department has consistently held that a grievance initiated in a timely manner but with the wrong party will not bar a grievance for noncompliance.<sup>4</sup>

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<sup>1</sup> The grievance is dated April 20, 2007, but was not mailed until April 21, 2007.

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

<sup>3</sup> *Grievance Procedure Manual*, § 2.4.

<sup>4</sup> EDR Rulings 99-007; 99-011; 99-171; 2000-008; 2001-195; 2001-230; 2004-645; 2006-1114.

In this case, the event that forms the basis of the grievance is the grievant's receipt the disciplinary action on March 23, 2007. Thus, the grievant should have initiated her grievance within thirty calendar days of March 23<sup>rd</sup>, or by April 22, 2007. As noted above, the grievant mailed her grievance on April 21, 2007, which is considered the initiation date. Furthermore, as noted above, this Department has long held that that a grievance initiated in a timely manner but with the wrong party will not bar a grievance for noncompliance.<sup>5</sup> Based on the facts of this case, and this Department's precedent, this grievance cannot be barred on the basis of untimeliness.

### CONCLUSION

Within 5-workdays of receipt of this ruling, the agency is ordered to set up a second step meeting with the grievant. This Department's rulings on matters of compliance are final and nonappealable.<sup>6</sup>

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Claudia T. Farr  
Director

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<sup>5</sup> See EDR Ruling #2006-1256, 2006-1257.

<sup>6</sup> Va. Code § 2.2-1001 (5).