

Issue: Compliance Ruling/30-day rule; Ruling Date: August 25, 2006; Ruling #2007-1419; Agency: Department of Juvenile Justice; Outcome: grievant not in compliance, untimely.



**COMMONWEALTH of VIRGINIA**  
**Department of Employment Dispute Resolution**  
**COMPLIANCE RULING OF DIRECTOR**

In the matter of Department of Juvenile Justice  
Ruling No. 2007-1419  
August 25, 2006

The grievant has requested a compliance ruling in his March 13, 2006 grievance with the Department of Juvenile Justice (DJJ or the agency). The agency asserts that the grievant did not initiate his grievance within the 30-calendar-day time period required by the grievance procedure. For the reasons discussed below, this grievance is untimely and may be administratively closed.

FACTS

The grievant is employed with the agency as a Probation Officer. On March 13, 2006, the grievant initiated a grievance challenging statements allegedly made by management during the resolution steps for an earlier grievance, filed on February 24<sup>th</sup>, regarding the grievant's having been previously counseled during his annual evaluation. The agency advised the grievant that it considered his March 13<sup>th</sup> grievance to be duplicative of the February 24<sup>th</sup> grievance, and the grievant appealed to this Department. In Ruling No. 2006-1319, this Department ruled that the March 13<sup>th</sup> grievance was not duplicative, but noted that its ruling did not preclude the agency from raising other compliance objections to the grievance.

Following this Department's ruling, the grievance advanced to the second management resolution step. On July 19, 2006, the second-step respondent advised the grievant that his March 13, 2006 grievance was untimely, as it challenged the grievant's September 29, 2005 performance evaluation and a subsequent October 7, 2005 meeting between the grievant and his supervisor. The grievant has appealed this determination to this Department.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date he knew or should have known of the event or action that is the basis of the grievance.<sup>1</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.

---

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

In this case, the agency states that the events which form the basis of the March 13th grievance are the grievant's September 29, 2005 performance evaluation and a subsequent meeting with his supervisor on October 7, 2005. The grievant has not challenged this assertion. As the grievant did not initiate his grievance challenging these events until March 13, 2006, more than 30 calendar days after the events occurred, his grievance was untimely. Thus, the only remaining issue is whether there was just cause for the delay.

The grievant asserts that he attempted to grieve his evaluation, but was told by his supervisor that the evaluation could not be grieved. The grievant argues that the agency should now be estopped from challenging the grievance as untimely, given this alleged misrepresentation.

This Department has long held employees accountable for knowing the rules regarding the grievance procedure.<sup>2</sup> The *Grievance Procedure Manual* expressly states that "any employment related issue may be grieved," so long as the grievance is initiated within 30 calendar days, the issue arises in the agency in which the employee works, the grievance pertains directly and personally to the employee's own employment in a position with access to the grievance procedure, the grievance is not being used to harass or otherwise impede the efficient operations of government, and the issue being grieved has not been challenged through another grievance or another state process.<sup>3</sup>

In this case, the grievant allegedly received information from his supervisor that contradicted the *Grievance Procedure Manual*. While this Department finds the alleged misrepresentation by the supervisor troubling, if in fact it occurred, the *Grievance Procedure Manual* reasonably notifies an employee that he may initiate a grievance challenging a performance evaluation. Further, the grievant could have contacted this Department via the toll-free AdviceLine provided in the *Manual* (as well as on this Department's website) for clarification regarding any discrepancy between the advice given by his supervisor and the terms of the *Manual*. He did not, but instead elected to rely on the guidance of his supervisor. Accordingly, we find that the grievant has not demonstrated just cause for initiating his grievance within the 30-calendar-day period.

### CONCLUSION

For the reasons discussed above, this Department has determined that this grievance is untimely. By copy of this ruling, the grievant and the agency are advised

---

<sup>2</sup> See, e.g., EDR Ruling No. 2003-126R. The *Grievance Procedure Manual* is available to all state employees through this Department's website, [www.edr.virginia.gov](http://www.edr.virginia.gov). In addition, an employee may learn how to obtain a copy of the *Manual* by contacting this Department's AdviceLine or his agency's human resources department.

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

that the agency may administratively close this grievance. This Department's rulings on matters of compliance are final and nonappealable.<sup>4</sup>

---

Claudia T. Farr  
Director

---

<sup>4</sup> Va. Code § 2.2-1001 (5).