

Issue: Grievance Procedure/30 day rule; Ruling Date: October 17, 2006; Ruling #2007-1447; Agency: Virginia Information Technologies Agency; Outcome: grievant not in compliance



Department of Employment Dispute Resolution

COMPLIANCE RULING OF THE DIRECTOR

In the matter of Virginia Information Technologies Agency

No. 2007-1447

October 17, 2006

The grievant has requested a ruling on whether her September 6, 2006 grievance with the Virginia Information Technologies Agency (VITA or 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

On July 24, 2006, the grievant received a Group II Written Notice for purportedly sleeping during work hours and insubordinate performance. On September 6, 2006, the grievant initiated a grievance challenging the Group II Written Notice. Because she was initiating the grievance more than 30 calendar days after the Written Notice was issued, the grievant requested an extension from the agency. The grievant stated that she had been on leave for a substantial portion of the 30-day period due to a medical condition. Her medical condition led to the grievant's fatigue and use of various leave time, including annual leave, administrative leave, personal leave, and family medical leave. Between July 24, 2006, and August 23, 2006,¹ the grievant was out of work for six full days and took leave for parts of seven days.² The grievant was at work, at least for part of the day, on August 23, 2006. At the first resolution step, the agency informed the grievant that her grievance was untimely and declined to grant an extension.

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.³ 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 The 30th day of the 30-day period was August 23, 2006.

² It is unclear whether each instance of leave during this period was related to the grievant's medical condition. However, for purposes of this ruling, it is assumed that they were all related.

³ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4(1).

In this case, the event that forms the basis of her 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.⁴ The grievant received the Group II Written Notice on July 24, 2006, and thus should have initiated her grievance within 30 days, i.e., no later than August 23, 2006. The grievant did not initiate her grievance until September 6, 2006, which was 44 days after the Group II was issued and, thus, untimely. The only remaining issue is whether there was just cause for the delay.

The grievant asserts she was unable to file her grievance timely because of a medical condition that caused her to be on leave for a substantial portion of the 30-day period.⁵ 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.⁶ 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.⁷

The grievant asserts that her medical condition and resultant significant leave time should excuse the fact that she filed her grievance outside the 30-day period. The evidence presented does not reflect that the grievant endured a medical condition that prevented her from filing the grievance in a timely fashion. While her diagnoses led to fatigue and drowsiness, causing the grievant to take leave for a number of full and partial days, there is no evidence that the grievant's physical or mental impairment was so debilitating that it was impossible for her to comply with the grievance procedure. On the contrary, the grievant actually continued to work at her state job for a substantial portion of the workdays in the 30-day period. Additionally, the grievant was at work, presumably competently performing her job, for part of the day the grievance was due. Moreover, on the day the grievant ultimately initiated her grievance, September 6, 2006, the grievant was on family medical leave for the full day. Therefore, there is no evidence that the grievant was incapacitated to the point that she was unable to protect her grievance rights even when she was out of work because of her medical condition.

This Department concludes that there is little doubt that the grievant suffered from a significant medical condition. However, based upon the documentation provided, we cannot conclude that the grievant has provided sufficient evidence to establish that the condition and leave time rendered her incapable of protecting her grievance rights.

⁴ See EDR Ruling Nos. 2002-001; 2002-118; 2003-147, and 2005-986.

⁵ The grievant asserts that she should be entitled to an extension of the 30-day period equivalent to the time she was on leave during that period. In most circumstances, an employee's leave does not create such an extension. The grievance procedure requires that the grievance be initiated within 30 *calendar* days. If the time period was counted in *workdays*, the grievant's assertion may be more relevant. Therefore, this Department will analyze the grievant's arguments based on whether the grievant's medical condition prevented her from protecting her grievance rights.

⁶ See EDR Ruling Nos. 2003-154, 155; 2006-1201.

⁷ *Id.*; see also EDR Ruling No. 2005-1040.

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 receipt of the Group II Written Notice. Thus, unless management granted her an extension (which it did not), she was bound to initiate her challenge to the Group II Written Notice in a timely manner. Because she did not, her September 6, 2006 grievance may be administratively closed.⁸

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.⁹

Claudia T. Farr
Director

⁸ However, because she is potentially alleging detrimental treatment by the agency, i.e., a written notice, on account of a possible disability, the grievant might be able to seek the assistance of the Office of Equal Employment Services within the Department of Human Resource Management. The OEES can be contacted at 1-800-533-1414.

⁹ See Va. Code § 2.2-1001(5).