

Issue: Compliance/grievance procedure/30-day rule; Ruling Date: January 24, 2007;  
Ruling #2007-1527; Agency: Virginia Department of Transportation; Outcome: grievant  
not in compliance



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of Department of Transportation  
Ruling Number 2007-1527  
January 24, 2007

The Department of Transportation (VDOT or the agency) has requested a compliance ruling in the grievant's November 3, 2006 grievance. The agency asserts that the grievant did not initiate her grievance within the 30-calendar day time period required by the grievance procedure and seeks to administratively close the grievance. For the reasons discussed below, this grievance is untimely without just cause and may be administratively closed.

FACTS

The grievant is currently employed as an Environmental Specialist II with the Department of Conservation and Recreation (DCR), but had previously worked for VDOT from 1997 through 2005. The grievant recently applied for another position within DCR, but was not selected. On October 2, 2006, the grievant discovered that during the reference checks for the position she applied for at DCR, her former supervisor at VDOT allegedly told DCR that "[the grievant's] performance quality was average and that coordinating efforts, collaboration and communication were not among [the grievant's] strengths and handling difficult situations were not strengths." The grievant challenged her former supervisor's statements by initiating a grievance with VDOT on November 3, 2006.

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>1</sup> When an employee initiates a

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

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 the grievance is the alleged poor reference given by the grievant's former VDOT supervisor. Although her former supervisor's comments about her performance were made on August 30, 2006, the grievant did not become aware of the alleged statements regarding her performance until October 2, 2006. As such, the grievant should have initiated her grievance within 30 calendar days of October 2, 2006, or by November 1, 2006. The grievant did not initiate her grievance until November 3, 2006, which was untimely. Thus, the only remaining issue is whether there was just cause for the delay.

The grievant claims that she was told by the DCR Human Resources office that her only recourse in this case was to talk to her former supervisor regarding his actions and that she did not become aware of her ability to file a grievance until she spoke with an EDR Consultant on either November 2<sup>nd</sup> or 3<sup>rd</sup>.<sup>2</sup>

This Department has long held employees accountable for knowing the rules regarding the grievance procedure.<sup>3</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>4</sup>

As such, despite what the grievant was allegedly told by the DCR Human Resources office, the *Grievance Procedure Manual* reasonably notifies an employee that she may initiate a grievance challenging a poor reference given by a former supervisor at a state agency. Further, the grievant admits that she became aware on October 3, 2006 of this Department's toll-free AdviceLine, but waited until November 2<sup>nd</sup> to contact this Department for clarification regarding any discrepancy between the advice given by representatives of DCR's Human Resources office and the terms of the *Manual*. Accordingly, we find that the grievant has not demonstrated just cause for failing to initiate her grievance within the 30-calendar-day period.

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<sup>2</sup> According to the grievant, she contacted this Department on November 2, 2006, but was not advised by an EDR Consultant of her grievance procedure options until the following day, November 3, 2006.

<sup>3</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>4</sup> *Grievance Procedure Manual* § 2.4

CONCLUSION

For the reasons discussed above, this Department has determined that this grievance was not filed within the 30-calendar day period and is therefore untimely. By copy of this ruling, the grievant and the agency are advised that the agency may administratively close this grievance. This Department's rulings on matters of compliance are final and nonappealable.<sup>5</sup>

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Claudia T. Farr  
Director

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<sup>5</sup> Va. Code § 2.2-1001 (5).