

Issue: Compliance – Grievance Procedure: 30-Day Rule; Ruling Date: July 25, 2007; Ruling #2008-1737; Agency: Department of Corrections; Outcome: Grievant Not In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Corrections
Ruling Number 2008-1737
July 25, 2007

The grievant has requested a compliance ruling in his June 24, 2007 grievance with the Department of Corrections (DOC 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 without just cause and may be administratively closed.

FACTS

The grievant is employed as a Correctional Officer. On July 18, 2006, the grievant received a Group II Written Notice for sleeping during work hours. On June 24, 2007, the grievant initiated a grievance challenging the agency's failure to similarly discipline another corrections officer that had been observed sleeping while at work on May 27, 2007. The agency asserts that the grievance is out of compliance with the grievance procedure because it was not initiated within the mandated 30-calendar day time period.

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.¹ 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 addition, a grievance must pertain directly and personally to the employee's own employment.²

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

² *Id.*

The grievant claims that his grievance is timely because he is challenging the agency's alleged misapplication and/or unfair application of policy and preferential treatment of an officer that was discovered sleeping on the job on May 27, 2007 and not his receipt of the Group II Written Notice in July 2006.³ This Department has long held that the 30 calendar day rule is triggered by the grievant's knowledge of the "event or action" directly affecting the grievant's own employment (e.g. his Written Notice), not by the grievant's discovery of evidence that the "event or action" (his Written Notice) may have been unfair or improper.⁴ In this case, the event that directly and personally affected the grievant's employment occurred on July 18, 2006, when he received the Written Notice, not when he later discovered that another employee may have been treated more favorably in the same situation. Accordingly, he should have initiated his grievance within 30 days of his receipt of the July 2006 Group II Written Notice. The grievant did not initiate his grievance until June 24, 2007, which was untimely, and has failed to demonstrate just cause for his delay in initiating his grievance.

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.⁵

Claudia T. Farr
Director

³ According to the grievant, the employee who was discovered sleeping while at work received only a counseling letter for her behavior.

⁴ See EDR Rulings Nos. 2005-1004; 2005-941 and 2004-881.

⁵ Va. Code § 2.2-1001 (5).