

Issue: Compliance – Grievance Procedure: 30-Day Rule; Ruling Date: October 4, 2007; Ruling #2007-1785; Agency: University of Mary Washington; Outcome: Grievant Not In Compliance.



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of the University of Mary Washington  
Ruling Number 2008-1785  
October 4, 2008

The grievant has requested a compliance ruling in his August 7, 2007 grievance with the University of Mary Washington (the University). The University 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 as an Information Technology Specialist II. In March of 2007, the grievant applied for position 00321 with the University. One of the requirements for the position was "direct experience in the diagnosis, repair and general support of personal computing." The grievant was informed on or about April 24, 2007 that he was not the successful applicant.

On July 17, 2007, the grievant spoke with the successful candidate, who purportedly informed the grievant that he had never worked as a computer technician. Based on this alleged admission, on August 7, 2007, the grievant challenged the selection via the grievance procedure as a misapplication of the hiring process.

**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.

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

In this case, the event that forms the basis of the grievance is the grievant's non-selection for position 00321. The grievant first learned that he was not selected on or about April 24, 2007; therefore, he should have initiated his grievance within thirty days of April 24<sup>th</sup>. The grievant did not initiate his grievance until August 7, 2007, which was untimely. Thus, the only remaining issue is whether there was just cause for the delay.

Here, the grievant appears to argue that only after the successful candidate purportedly admitted that he did not have experience as a computer technician could he deduce that the selection was improper. In other words, it was not until he received the information that the successful applicant had no such experience that he knew or should have known of any impropriety in the selection process. However, as noted above, the actual event that formed the basis of the grievance was his non-selection, which he learned of more than 30 days prior to the initiation of his grievance. The 30-day rule effectively required the grievant to inquire as to the background of the successful applicant soon after he discovered he was not the successful applicant. However, if he did so and was not provided with this information, he could have initiated a grievance challenging the selection and then would have been entitled, by law, to documents relating to the successful candidate's qualifications.<sup>2</sup> Moreover, there was nothing that precluded the grievant from requesting an extension to the 30-day deadline in order to gather pertinent information and documentation.<sup>3</sup>

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

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Claudia T. Farr  
Director

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<sup>2</sup> The relevant grievance statute provides that:

Absent just cause, all documents, as defined in the Rules of the Supreme Court of Virginia, relating to the actions grieved shall be made available, upon request from a party to the grievance, by the opposing party, in a timely fashion. Upon such request a party shall have a duty to search its records to ensure that all such relevant documents are provided. Documents pertaining to nonparties that are relevant to the grievance shall be produced in such a manner as to preserve the privacy of the individuals not personally involved in the grievance. A party shall not be required to create a document if the document does not exist.

Va. Code § 2.2-3003(E).

<sup>3</sup> *Grievance Procedure Manual* § 2.2, expressly states the 30-day requirement may be extended. *See also Grievance Procedure Manual* §8.4, which states that “[u]pon mutual agreement, parties to a grievance may extend all pre-qualification time limits including, but not limited to, the 30 calendar day grievance initiation requirement.”

<sup>4</sup> Va. Code § 2.2-1001 (5).