

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: February 4, 2008; Ruling #2008-1892; Agency: Department of Juvenile Justice; Outcome: Grievant Not In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of Juvenile Justice
Ruling Number 2008-1892
February 4, 2008

The grievant has requested a compliance ruling in his grievance challenging an October 11, 2007 Written Notice. The grievant's employing agency, the Department of Juvenile Justice (DJJ or 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 as a Security Sergeant. On October 11, 2007, the grievant was issued a Group II Written Notice for failure to follow a supervisor's instructions, perform assigned work, or otherwise comply with established written policy. The grievant asserts that he presented to the Superintendent on November 5, 2007, a grievance challenge to the Written Notice. The Superintendent agrees that the grievant gave him the grievance but states that he does not know exactly what day this occurred. The superintendent forwarded the grievance to the Captain, the individual who issued the discipline. The grievance advanced through the first and second management resolution steps, but the third step respondent returned it to the grievant indicating that the agency was closing the grievance because it was initiated more than 30 days after he was issued the Written Notice.

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.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. The grievance procedure also states that "[t]he employee bears the burden of establishing that the grievance was timely initiated. Thus, employees are strongly

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

encouraged to document the initiation date, for instance, by using certified mail or requesting a date-stamped photocopy of the 'Form A.'"²

In this case, the event that forms the basis of the grievance is the grievant's receipt of the Written Notice which apparently occurred on October 11, 2007. The grievant and agency disagree, however, on the date upon which the grievant presented his grievance to the Superintendent. The Superintendent admits that he does not know exactly which day he received the grievance but he asserts that it was no more than five to six workdays prior to when it was passed along to the Captain, who purportedly held it not longer than a day.

While it is possible that the grievance was presented to the Superintendent within 30 days of when the grievant was presented the Written Notice, the agency has challenged the timeliness of the grievance. Beyond his assertion that the grievance was timely initiated, the grievant has not provided any evidence to support his claim that it was initiated within the 30-day window. As noted above, the grievant bears the burden of showing that his grievance was timely initiated and without any corroborating evidence of a timely filing, the grievant does not meet that burden.

CONCLUSION

For the reasons discussed above, this Department has determined that the grievant has not established that his grievance was timely filed. Accordingly, it may be closed. This Department's rulings on matters of compliance are final and nonappealable.³

Claudia T. Farr
Director

² Grievance Procedure Manual § 2.4(1).

³ Va. Code § 2.2-1001 (5).