

Issue: Compliance – Grievance Procedure (30-Day Rule); Hearing Date: January 7, 2008; Ruling #2008-1894; Agency: Virginia Department of Transportation; Outcome: Grievant Not in Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF THE DIRECTOR

In the matter of Department of Transportation
No. 2008-1894
January 7, 2008

The grievant has requested a ruling on whether his November 28, 2007 grievance with the Department of Transportation (the agency) is in compliance with the grievance procedure. The agency asserts that the grievance was not timely initiated. For the reasons set forth below, this Department determines that the grievance is untimely and may be administratively closed.

FACTS

On November 16, 2006, the grievant was given a Group II Written Notice. The grievant states that he was originally told when he received the Written Notice that over 350 agency employees state-wide were under investigation for the same issue and that discipline would be the same for all involved. The grievant later learned that discipline was purportedly not given consistently. He states that only employees in his district were given Written Notices. In addition, the grievant learned in May or June 2007 that other co-workers in his district who received Group II Written Notices at the same time he did had succeeded at a grievance hearing in having their disciplinary actions reduced to Group I's. The grievant later contacted his human resources department to find out what more he could do about the situation. The grievant spoke with a human resources manager, who told him that he could try to file a grievance. The agency asserts that this agreement provided the grievant with an additional opportunity to file a timely grievance, even though it was well beyond thirty days after the grievant originally received the Written Notice. The grievant believes that this conversation occurred in August 2007, while the agency states that it occurred around Labor Day (September 2007).¹ The agency states that the grievant was told that he would have 30 days to file a grievance. However, the grievant did not initiate his grievance challenging the disciplinary action until November 28, 2007. The agency asserts that the grievance was untimely.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date he or she knew or should have known of the event or action

¹ For purposes of this ruling, it will be assumed that the conversation took place in September 2007.

that is the basis of the grievance.² 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.³

Here, the event that forms the basis of the 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 November 16, 2006, and, thus, should have initiated this grievance within 30 days, i.e., no later than December 16, 2006. The grievant did not initiate the grievance until November 28, 2007, which was over a year after the Written Notice was issued and, thus, untimely. Moreover, even if the agency extended the commencement of the 30-day filing deadline to September 2007 and gave the grievant another opportunity to grieve the Written Notice, the grievant did not initiate the grievance until late November, well beyond any additional 30-day window. The only remaining issue is whether there was just cause for the delay.

The grievant states that the agency led him to believe that he was being disciplined consistently with over 350 other agency employees, which he states he later discovered not to be true. 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.⁵ In this case, the event that directly and personally affected the grievant's employment occurred on November 16, 2006, when he received the Written Notice, not when he later discovered that other employees 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 November 16, 2006 Written Notice. The grievant did not initiate his grievance until November 28, 2007, which was untimely, and has failed to demonstrate just cause for his delay in initiating his grievance.

We note further that although the grievance may not proceed, mediation may be a viable option for the parties to pursue. EDR's mediation program is a voluntary and confidential process in which one or more mediators, neutrals from outside the grievant's agency, help the parties in conflict to identify specific areas of conflict and work out possible solutions that are acceptable to each of the parties. Mediation has the potential to effect positive, long-term changes of great benefit to the parties and work unit involved. For more information on this Department's Workplace Mediation program, the parties should call 888-232-3842 (toll free) or 804-786-7994. In addition, the grievant may have additional rights under the Virginia Government Data Collection and Dissemination Practices Act (the Act). Under the Act, if the

² Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4.

³ *Grievance Procedure Manual* § 2.4.

⁴ E.g., EDR Ruling No. 2008-1830; EDR Ruling No. 2005-986; EDR Ruling No. 2003-147; EDR Ruling No. 2002-118.

⁵ See EDR Ruling No. 2008-1737; EDR Ruling No. 2005-1004; EDR Ruling No. 2005-941; EDR Ruling No. 2004-881.

grievant gives notice that he wishes to challenge, correct or explain information contained in his personnel file, the agency shall conduct an investigation regarding the information challenged, and if the information in dispute is not corrected or purged or the dispute is otherwise not resolved, allow the grievant to file a statement of not more than 200 words setting forth his position regarding the information.⁶ This “statement of dispute” shall accompany the disputed information in any subsequent dissemination or use of the information in question.⁷

CONCLUSION

For the reasons set forth above, this Department concludes that the grievance was not timely initiated and there is no evidence of just cause for the 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.⁸

Claudia T. Farr
Director

⁶ Va. Code § 2.2-3806(A)(5).

⁷ *Id.*

⁸ *See* Va. Code § 2.2-1001(5).