

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date:
January 28, 2008; Ruling #2008-1909; Agency: College of William & Mary;
Outcome: Grievant Not In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the College of William and Mary
Ruling Number 2008-1909
January 28, 2008

The grievant has requested a compliance ruling in her December 18, 2007¹ grievance with the College of William and Mary (the College). The agency asserts that the grievant did not initiate her 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

Prior to her termination, the grievant was employed in customer service at the College. On November 2, 2007, the grievant was terminated from her employment with the College. Immediately after learning of her termination, the grievant asserts she left Virginia to visit her ill mother.² While visiting her mother out of state, the grievant states that she mailed the College a Freedom of Information Act (FOIA) request, which the grievant claims was received by the College on November 27, 2007. The grievant allegedly returned to Virginia on December 3, 2007. Thereafter, on December 18, 2007, the grievant hand-delivered her expedited grievance challenging her termination to the College's human resource office.³ On December 20th, the second step-respondent administratively closed the December 18th grievance for untimeliness. The grievant

¹ According to the Form A, the grievant signed and dated the grievance November 2, 2007. However, it appears that the grievant did not actually present the grievance to the College until December 18, 2007. Accordingly, this Department concludes that the grievance was initiated on December 18, 2007.

² According to the grievant, her mother had been ill for quite some time, but she found out at the end of October that her mother's illness had gotten worse. The grievant asserts that she could not leave to see her mother in October because she had to work, but that she left immediately upon her termination to be with her mother.

³ The grievant asserts that she mailed her grievance to the College prior to December 18, 2007 and that on December 18th she merely presented the College with a copy of her previously-mailed grievance. Under the grievance procedure, the grievant bears the burden of establishing that a grievance was timely initiated, and in cases of mailing, are strongly encouraged to send grievances by certified mail or in some other manner where the initiation date can be verified. *See Grievance Procedure Manual* § 2.4. In this case, the grievant has not provided anything to verify her assertion that she mailed her grievance to the College. Moreover, the College denies receiving the grievance until it was hand-delivered on December 18th.

admits that her December 18th grievance was initiated outside the mandated 30 calendar-day time period, but asks this Department to reopen her grievance based on “just cause.”

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.⁴ When an employee initiates a grievance beyond the 30-calendar day period without just cause,⁵ 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 grievant’s November 2, 2007 termination. The grievant was notified of her termination on November 2, 2007 and thus should have initiated her grievance within 30 days of November 2, 2007, or by December 2, 2007. The grievant did not initiate her grievance until December 18, 2007, which was untimely. Thus, the only remaining issue is whether there was just cause for the delay.

To support her claim of just cause, the grievant asserts that she was unable to timely challenge her termination because she was out of town visiting her ill mother the entire 30 calendar days following her termination. However, the grievant admits that during this 30-day period, she mailed the College a FOIA request and that this request was received by the College on November 27, 2007, five days prior to the deadline for initiating a grievance challenging her termination. Presumably, the grievant could have also mailed her grievance during this 30-day period as well but failed to do so. Accordingly, under the particular facts of this case, this Department cannot conclude that the grievant’s being out of town to attend to an ill family member constitutes just cause for failure to initiate her grievance within the mandated time period.

In addition, the grievant asserts that she has “just cause” for failing to timely initiate her grievance because she was awaiting “crucial documents that would support [her] claim” which she had requested pursuant to the FOIA. This Department has previously held that awaiting the production of documents does not extend the 30 calendar day timeframe.⁶ Further, while the 30-day rule may have required the grievant to initiate her grievance before receiving the requested documents, there was nothing that precluded the grievant from requesting an extension of the 30-day deadline in order to gather pertinent information and documentation.⁷

⁴ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4.

⁵ “Just cause” is defined as “[a] reason sufficiently compelling to excuse not taking a required action in the grievance process.” *Grievance Procedure Manual* § 9.

⁶ See e.g., EDR Ruling No. 2004-881; EDR Ruling No. 2003-087; EDR Ruling No. 2003-101 and EDR Ruling No. 2002-126;

⁷ *Grievance Procedure Manual* § 2.2 expressly states the 30-day requirement may be extended if the parties agree. See also *Grievance Procedure Manual* § 8.4, which states that “[u]pon mutual agreement, parties to

CONCLUSION

For the reasons discussed above, the grievance is untimely without just cause. The parties are advised that the agency may mark the grievance 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

a grievance may extend all pre-qualification time limits including, but not limited to, the 30 calendar day grievance initiation requirement.”

⁸ Va. Code § 2.2-1001(5).