

Issue: Reconsidered Compliance – Grievance Procedure (30-Day Rule); Ruling  
Date: May 2, 2008; Ruling #2008-2015; Agency: Department of Corrections;  
Outcome: Grievant Not In Compliance.



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

**RECONSIDERED COMPLIANCE RULING OF DIRECTOR**

In the matter of Department of Corrections  
Ruling Number 2008-2015  
May 2, 2008

The grievant has requested that this Department reconsider the compliance decision regarding her October 11, 2007 grievance in EDR Ruling No. 2008-1868, 2008-1965 (“initial compliance ruling”). The grievant has submitted medical documentation in support of her assertion that she was under medical care for “stress and anxiety,” which affected her ability to timely initiate the October 11, 2007 grievance.

FACTS

The grievant challenged a Group II Written Notice in the grievance dated October 11, 2007. In the initial compliance ruling, EDR determined that the grievant mailed this grievance on October 11, 2007, which was one day beyond the 30 calendar day deadline and, thus, not timely initiated.<sup>1</sup> The grievant now asserts, with medical documentation, that she experienced “stress and anxiety” during this period, which should excuse the delay of one day. This documentation reflects care by a physician at least as early as March 2007 for difficulty sleeping and “anxiety.” However, the documents also indicate that the grievant was “alert” and in “no acute” distress during her visits to the physician. Furthermore, it appears that the grievant was well enough to continue working for the agency during the 30-day period in which she was required to initiate her grievance.

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 that is the basis of the grievance.<sup>2</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. Because this Department has already determined that the grievance was initiated untimely, the only remaining question is whether there was just cause for the delay.

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<sup>1</sup> EDR Ruling No. 2008-1868, 2008-1965.

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

As stated in the initial compliance ruling, this Department has long held that illness or impairment does not automatically constitute “just cause” for failure to meet procedural requirements. To the contrary, in most cases it will not.<sup>3</sup> Illness may constitute just cause for delay only where there is evidence indicating that the physical or mental impairment was so debilitating that compliance with the grievance procedure was virtually impossible.<sup>4</sup> The medical documentation submitted by the grievant does not support a finding that the grievant was incapacitated to the point that she was unable to protect her grievance rights at any time during the 30-day period following the issuance of the Written Notice. This Department, therefore, concludes that the grievant has failed to demonstrate just cause for her delay. There is no basis to disturb this Department’s initial compliance ruling. This Department’s rulings on matters of compliance are final and nonappealable.<sup>5</sup>

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Claudia T. Farr  
Director

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<sup>3</sup> See EDR Ruling No. 2006-1201; EDR Ruling Nos. 2003-154, 155.

<sup>4</sup> *Id.*; see also EDR Ruling No. 2005-1040.

<sup>5</sup> See Va. Code § 2.2-1001(5).