

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: June 13, 2008; Ruling #2008-2029; Agency: Department of Social Services; Outcome: Grievant in Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF THE DIRECTOR

In the matter of Department of Social Services
EDR Ruling No. 2008-2029
June 13, 2008

The grievant has requested a ruling on whether her grievance, dated May 2, 2008, with the Department of Social Services (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 timely and may proceed.

FACTS

On March 25, 2008, the agency issued a Group III Written Notice with termination. It appears that the Written Notice, along with an accompanying letter dated March 24, 2008, was sent to the grievant by certified mail and regular mail on March 26, 2008. The certified mail envelope was returned to the agency as "unclaimed." However, based on the grievant's statements, she received the regular mail package on April 7, 2008. The grievant mailed her grievance challenging her termination to the agency on May 6, 2008. The agency asserts that the grievance was not timely initiated and administratively closed the grievance. The grievant has now sought a ruling from this Department to determine whether she was compliant with the grievance procedure.

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.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.

In this case, 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

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

the Written Notice to the employee.² Although the agency sent the grievant the Written Notice on March 26, 2008, the grievant did not receive the Written Notice until April 7, 2008,³ and, thus, should have initiated this grievance within 30 days, i.e., no later than May 7, 2008. The grievant mailed her grievance to the agency on May 6, 2008,⁴ before the 30 calendar-day period expired. Therefore, this grievance, dated May 2, 2008, was timely initiated and must be permitted to proceed.

CONCLUSION

For the reasons discussed above, this Department has determined that this grievance was filed timely within the 30 calendar-day period. By copy of this ruling, the parties are advised that within five workdays of the receipt of this ruling, the second step-respondent must respond to the grievance.⁵ This Department's rulings on matters of compliance are final and nonappealable.⁶

Claudia T. Farr
Director

² E.g., EDR Ruling No. 2005-986; EDR Ruling No. 2003-147; EDR Ruling No. 2002-118.

³ EDR is relying on the grievant's statement to establish the date she received the Written Notice. Although it is the grievant's burden to establish that the grievance was timely initiated, *see Grievance Procedure Manual* § 2.4, there is no documentary evidence the grievant could produce, or at least none known to this Department, to establish the date she receives an item of regular mail. Though the agency took the reasonable and prudent step of mailing the Written Notice by certified mail as well, which normally would permit the agency to affirmatively establish the date of receipt to begin the 30 calendar-day clock, the grievant never received that package. Further, the grievant's statement is not at all contradicted and, in fact, appears consistent with the known facts regarding the mailings sent by the agency. The grievant did not receive the certified mail package, which was later returned to the agency as unclaimed. In addition, the gap between the date the Written Notice was sent to the grievant by regular mail (March 26, 2008) and its apparent receipt (April 7, 2008) does not appear to be so unreasonable as to call into question the veracity of the grievant's assertion.

⁴ "[F]or purposes of establishing when a mailed grievance was initiated, the postmark date is considered the initiation date." *Grievance Procedure Manual* § 2.4.

⁵ The grievant initiated her grievance pursuant to the Expedited Process. Therefore, the first management resolution step is with the second step-respondent. *Grievance Procedure Manual* § 2.4.

⁶ Va. Code § 2.2-1001(5).