

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: September 22, 2008; Ruling #2009-2081; Agency: Virginia Department of Health; Outcome: Grievant in Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF THE DIRECTOR

In the matter of the Virginia Department of Health
EDR Ruling No. 2009-2081
September 22, 2008

The grievant has requested a ruling on whether his grievance, dated June 17, 2008, with the Virginia Department of Health (VDH or 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

Prior to January 17, 2007, the grievant was employed by the agency as an Environmental Health Specialist Senior. Effective January 17, 2007, the grievant was demoted to the position of Environmental Health Specialist and his salary was reduced.

On or about May 6, 2008, the grievant sent an e-mail to his supervisor requesting an "immediate return" of his senior position, along with back pay. His supervisor responded by e-mail on May 6th. In his reply e-mail, the grievant's supervisor advised the grievant that he would need "at least 15 business days to respond to [his] request for promotion to Environmental Health Specialist Senior." The supervisor further informed the grievant that if he were "promoted to the Senior position before the end of the performance year, there are no provisions for back pay; there will only be an effective date on which a pay increase will occur."

After his supervisor did not respond within the 15 business-day period, the grievant initiated a grievance on June 17, 2008. The agency asserts that the grievance challenges the grievant's January 2007 demotion and was therefore not timely initiated. The grievant has now sought a ruling from this Department to determine whether his grievance is timely.

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.

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

In this case, the event that forms the basis of the grievance is the supervisor's failure to respond positively, within 15 business days of May 6, 2008, to the grievant's request for a promotion within 15 business days of May 6, 2008. Because that 15 business-day period did not run until May 28, 2008, the grievant's June 17, 2008 grievance challenging his supervisor's failure was initiated within 30 calendar days and was therefore timely. To the extent, however, the grievant seeks to challenge the January 2007 demotion and salary reduction (including any claims for back pay), such claims are untimely and may not be pursued as part of the June 17th grievance.

CONCLUSION

For the reasons discussed above, this Department has determined that to the extent the grievant challenges his supervisor's failure to respond positively to his request for a promotion by May 28, 2008, his June 17, 2008 grievance was filed timely within the 30-calendar-day period. By copy of this ruling, the parties are advised that within five workdays of his receipt of this ruling, the grievant must resubmit his grievance to the first-step respondent using the Grievance Form A.² This Department's rulings on matters of compliance are final and nonappealable.³

Claudia T. Farr
Director

² The grievant initiated his grievance pursuant to the Expedited Process. Because the grievance does not challenge a loss of pay, the Expedited Process is not available and the grievant must instead use the regular Grievance Form A. *See Grievance Procedure Manual* § 2.4.

³ Va. Code § 2.2-1001(5); Va. Code § 2.2-3003(G).