

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: May 6, 2009;
Ruling #2009-2176; Agency: Department of Game and Inland Fisheries; Outcome:
Grievant In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of Game and Inland Fisheries
Ruling Number 2009-2176
May 6, 2009

The grievant has requested a compliance ruling regarding his August 8, 2008 grievance challenge to his pay. The grievant's employing agency, the Department of Game and Inland Fisheries (the agency), asserts that the grievant did not initiate his grievance within the 30-calendar day time period required by the grievance procedure. For the reasons discussed below, this grievance is timely.

FACTS

The grievant is employed as a Conservation Police Sergeant. On or about July 3, 2008, the grievant engaged in discussions with the agency regarding a voluntary transfer to a new position in the same pay band, which was originally to become effective on July 10, 2008. However, on July 9, 2008, the grievant e-mailed the Colonel requesting the opportunity to further negotiate his starting salary in the new position. The following day, the Colonel informed the grievant that his transfer could not proceed and that the grievant's July 10th transfer was based on the understanding that the grievant had accepted the terms of the agency's original offer. According to the agency, the grievant's transfer was then rescheduled and approved as effective July 25, 2008. The grievant initiated a grievance challenging his starting salary for the new position on or about August 8, 2008.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date he 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 basis of the grievance is the grievant's pay. The agency asserts that it approved the grievant's pay on July 3, 2008. However, it appears that the agency has also taken

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

the position that the grievant's July 9, 2008 e-mail request to renegotiate his starting salary was essentially a rejection of the original offer. The agency has stated that following "subsequent discussions," when it became evident that the agency did not intend to offer the grievant a higher salary, the grievant "agreed to accept the original salary offer," and the "transfer was then rescheduled, recommended and approved, effective, July 25, 2008." Accordingly, the grievant had 30 calendar days from July 25, 2008 to initiate his grievance. The grievant's August 8, 2008 grievance is therefore timely.²

CONCLUSION

For the reasons discussed above, this Department has determined that this grievance is timely filed. Accordingly, by copy of this ruling, the parties are advised that within five workdays of receipt of this ruling, the grievant must either conclude his grievance or request qualification from the agency head. This Department's rulings on matters of compliance are final and nonappealable.³

Claudia T. Farr
Director

² *C.f.* EDR Ruling No. 2004-784 (the 30 day grievance initiation timeframe begins to run on the effective date of layoff, not when the employee is first notified of the agency's intent to lay the employee off.)

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