

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: February 18, 2009; Ruling #2009-2204; Agency: Department of Juvenile Justice; Outcome: Grievant Not In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of Juvenile Justice
Ruling Number 2009-2204
February 18, 2009

The grievant has requested a compliance ruling in his August 28, 2008 grievance with the Department of Juvenile Justice (DJJ or the agency). At the qualification phase, the agency denied qualification asserting that the grievant did not initiate his grievance within the required 30 calendar day time period. For the reasons discussed below, this grievance is out of compliance with the grievance procedure.

FACTS

The grievant applied for the position of Captain (Chief of Security) with the agency. The position was advertised with a pay range of \$55,000-62,500. Following first and second interviews, but prior to being offered the position from the Superintendent, the grievant was informed that the position's salary range has been incorrectly posted. In a conditional offer of employment dated June 4, 2008, the agency informed the grievant that he could either accept the position with the salary of \$46,000 per year, or the position would be re-advertised and, if he were selected, he would be offered the position at the same \$46,000. The conditional offer stated that if he accepted the position, he would be "agreeing to forfeit the right to grieve this action." On June 4, 2008, the grievant signed the conditional offer of employment, accepting the Captain position and the \$46,000 salary.

The grievant asserts that he showed the conditional offer letter to another Captain, his former supervisor, to assess the validity of the letter. The Captain purportedly opined that it looked as though the grievant had indeed waived his right to grieve. However, the grievant asserts that once he accepted the position and moved to the new facility where his new position is located, he was informed by the Human Resources Director at the new facility that he had been misinformed when he was told he could not grieve the action. The grievant asserts that he initiated his grievance the same day that he received news of the purported misinformation about his grievance rights.

DISCUSSION

Compliance

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

forms the basis of the grievance.¹ When an employee initiates a grievance beyond the 30-calendar day period without just cause,² the grievance is not in compliance with the grievance procedure, and may be administratively closed. The agency asserts that the grievant did not initiate his grievance within 30 days of either the conditional offer or the effective date of the promotion.

In this case, the event that forms the basis of the grievance is the agency's offer and grievant's acceptance of the conditional offer of employment, both of which occurred on June 4, 2008. Assuming without deciding that the grievant had access to the grievance process, any grievance should have been initiated within 30 days of June 4th. The grievant did not initiate his grievance until August 28, 2008, which was untimely. Thus, the only remaining issue is whether there was just cause for the delay.

To support his claim of just cause, the grievant asserts that he was: (1) informed by the agency's human resources department, via the conditional offer of employment dated June 4, 2008, that he could not "grieve this action," (2) advised by another Captain that he had waived his grievance rights, and (3) informed by the Human Resource Director at his new facility that he could grieve, but was so informed only after he had taken the new position.

The grievant's assertion that he had no reason to believe that he could grieve this action until being told by a member of the human resources department at the new facility cannot serve as just cause for his delay in initiating this grievance. First, this is not a case where the grievant was unaware of the grievance process—the conditional offer expressly addresses his right to grieve. Moreover, reliance on speculation offered by others regarding the waiver of grievance rights simply does not constitute just cause for delay. Here, the grievant was aware on June 4th of (1) the grievance process, and (2) that the agency's offer of the position was conditioned upon his waiver of his right to grieve that action. Notwithstanding the opinions of others regarding the effectiveness of such a waiver, to the extent that the grievant had any desire to challenge the events of June 4th, such an attempt should have been made within the 30 day period following June 4th. The grievance was not initiated until August 28th and there is no just cause to justify the delay.

This Department's rulings on matters of procedural compliance are final and nonappealable.³

Claudia T. Farr
Director

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

² "Just cause" is defined as "[a] reason sufficiently compelling to excuse not taking a required action in the grievance process." *Grievance Procedure Manual* § 9.

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