

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: February 19, 2009; Ruling #2009-2222; Agency: Department of Mental Health, Mental Retardation and Substance Abuse Services; Outcome: Grievant Not In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF THE DIRECTOR

In the matter of Department of Mental Health, Mental Retardation
and Substance Abuse Services
Ruling No. 2009-2222
February 19, 2009

The grievant has requested a ruling on whether his grievance with the Department of Mental Health, Mental Retardation and Substance Abuse 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 untimely and may be administratively closed.

FACTS

On November 24, 2008, the agency issued two Group II Written Notices with termination to the grievant. Shortly thereafter, the grievant had a planned and previously approved trip out of the country with scheduled departure on November 26, 2008. The grievant states that he mailed his response to the Written Notices and Grievance Form A to the agency while he was out of the country. The agency, however, states that it never received any materials from the grievant by mail. Rather, it appears the grievant had another individual deliver the documents by hand to the agency. As such, the agency states that an individual delivered a letter, dated December 15, 2008, from the grievant responding to the Written Notices. However, this package did not include a formal grievance form. The actual Grievance Form A was not received from the grievant until it was delivered by hand on January 5, 2009 by another individual. The agency has asserted that the grievance was untimely because it was received beyond the 30 calendar-day deadline and administratively closed the grievance. The grievant has now sought a ruling from this Department to determine whether he 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

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

procedure and may be administratively closed. Further, the *Grievance Procedure Manual* provides that an “employee must initiate a grievance on a fully completed ‘Form A.’”²

In this case, the event that forms the basis of the grievance is the agency’s issuance of the Written Notices. 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 the Written Notice to the employee.³ The grievant received the Written Notices on November 24, 2008, and, thus, should have initiated this grievance within 30 days, i.e., no later than December 24, 2008. The Grievance Form A was not received by the agency until January 5, 2009, which was twelve days after the expiration of this 30-calendar day period and, thus, was untimely. The only remaining issue is whether there was just cause for the delay.

The grievant argues that his late submission should be excused because he was traveling out of the country immediately following his termination. Based on the facts gathered during investigation for this ruling, this Department cannot conclude that just cause existed for the grievant’s failure to file the grievance within the requisite 30-day period. The grievant has alleged no grounds beyond his control that would justify the untimely initiation of this grievance. Indeed, even though out of the country, the grievant was actually able to submit to the agency a December 15, 2008 letter. Unfortunately, that letter was not a fully completed Grievance Form A, and thus was insufficient to serve as the filing of a grievance. In short, it cannot be said that his overseas trip prevented him from filing a timely grievance. Further, it does not appear that the grievant attempted to send in a Grievance Form A until he had a conversation with the agency by phone after the 30-day period had lapsed.

This Department has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.⁴ A grievant’s lack of knowledge about the grievance procedure and its requirements does not constitute just cause for failure to act in a timely manner. This Department, therefore, concludes that the grievant has failed to demonstrate just cause for his delay.

However, the grievant may have additional rights under the Virginia Government Data Collection and Dissemination Practices Act (the Act). Under the Act, if the grievant gives notice that he wishes to challenge, correct or explain information contained in his personnel file, the agency shall conduct an investigation regarding the information challenged, and if the information in dispute is not corrected or purged or the dispute is otherwise not resolved, allow the grievant to file a statement of not more than 200 words setting forth his position regarding the information.⁵ This “statement of dispute” shall accompany the disputed information in any subsequent dissemination or use of the information in question.⁶

² *Grievance Procedure Manual* § 2.4.

³ E.g., EDR Ruling No. 2005-986; EDR Ruling No. 2003-147; EDR Ruling No. 2002-118.

⁴ E.g., EDR Ruling No. 2009-2079; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

⁵ Va. Code § 2.2-3806(A)(5).

⁶ *Id.*

CONCLUSION

For the reasons set forth above, this Department concludes that the grievance was not timely initiated and there is no evidence of just cause for the delay. The parties are advised that the grievance should be marked as concluded due to noncompliance and no further action is required. This Department's rulings on matters of compliance are final and nonappealable.⁷

Claudia T. Farr
Director

⁷ See Va. Code § 2.2-1001(5), 2.2-3003(G).