

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: February 24, 2009; Ruling #2009-2229; Agency: Department of State Police; Outcome: Grievant Not In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF THE DIRECTOR

In the matter of Department of State Police
Ruling No. 2009-2229
February 24, 2009

The Department of State Police (the agency) has forwarded the grievant's February 4, 2009 grievance noting its position that the grievance should be administratively closed for noncompliance. 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

The grievant initiated his February 4, 2009 grievance to challenge his termination, of which he was notified by the agency on December 30, 2008. The grievant was terminated following a re-evaluation period after receiving a "Below Contributor" rating on his annual performance evaluation. The grievant's termination occurred during the pendency of a prior grievance challenging a Written Notice the grievant had received. The hearing regarding that prior grievance was held on December 16, 2008,¹ the date the grievant was allegedly placed on leave with pay. The agency met with the grievant on December 23, 2008 and, thereafter, notified him of the termination in a letter dated December 29, 2008.

After the termination, the grievant sought administrative review from this Department regarding the hearing decision in the prior grievance.² Attached to his request for administrative review was a copy of the December 29, 2008 termination letter. The grievant states he thought that EDR would address the matter if he attached it to the request for review. The grievant also disputes his termination because it was not based on any "new acts."

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

¹ Decision of Hearing Officer, Case No. 8985, Dec. 23, 2008 ("Hearing Decision"), at 1.

² See EDR Ruling No. 2009-2214.

that is the basis of the grievance.³ 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 grievant's termination. The grievant became aware of the termination on December 30, 2008, and, thus, should have initiated this grievance within 30 days, i.e., no later than January 29, 2009. The Grievance Form A was not received by the agency until February 4, 2009, which was six days after the expiration of this 30-day period and, thus, untimely. The only remaining issue is whether there was just cause for the delay.

The grievant argues that his termination was not based on any "new acts" because he was terminated when his "case" was before the hearing officer and while he was on leave with pay. Therefore, it appears he believes that the termination was not proper as the matter was with the hearing officer at the time, making his termination an extension of Case No. 8985, which he feels could be considered as a part of that action. The grievant also apparently thought that by attaching the termination letter to his request for administrative review it would be considered. However, the grievant's understandings are not correct.

Once a grievance is initiated, additional claims may not be added.⁴ To grieve the termination the grievant was required to initiate a new grievance because it was a new and different management action from the Written Notice he grieved in Case Number 8985.⁵ Furthermore, to do so, he would need to initiate the grievance on the Grievance Form A.⁶ Simply attaching his termination letter to correspondence to this Department is not equivalent to initiating a grievance.⁷

This Department has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.⁸ 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. The grievant has alleged no grounds beyond his control that would justify the untimely initiation of this grievance. 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

³ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4.

⁴ *Grievance Procedure Manual* § 2.4.

⁵ See, e.g., EDR Ruling No. 2008-2055, 2008-2056; EDR Ruling No. 2007-1593; EDR Ruling No. 2007-1528; see also *Grievance Procedure Manual* § 2.4 n.1.

⁶ *Grievance Procedure Manual* § 2.4 ("An employee must initiate a grievance on a fully completed 'Form A.'").

⁷ The grievant's prior grievance in Case Number 8985 did not concern his termination and, therefore, neither the hearing decision nor this Department's administrative review ruling (EDR Ruling No. 2009-2214) addressed or affected the December 29, 2008 letter. Consequently, the grievant's apparent assumption that the termination letter is "nullified and withdrawn" is incorrect.

⁸ See, e.g., EDR Ruling No. 2009-2079; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

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.⁹ This “statement of dispute” shall accompany the disputed information in any subsequent dissemination or use of the information in question.¹⁰

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.¹¹

Claudia T. Farr
Director

⁹ Va. Code § 2.2-3806(A)(5).

¹⁰ *Id.*

¹¹ *See* Va. Code § 2.2-1001(5), 2.2-3003(G). The grievant has also requested information about the process whereby Case Number 8985 could be reviewed by a circuit court. In EDR Ruling Number 2009-2214, this Department advised the grievant of his appellate options: Pursuant to Section 7.2(d) of the *Grievance Procedure Manual*, a hearing officer’s original decision becomes a final hearing decision once all timely requests for administrative review have been decided. *Grievance Procedure Manual* § 7.2(d). Within 30 calendar days of a final hearing decision, either party may appeal the final decision to the circuit court in the jurisdiction in which the grievance arose. Va. Code § 2.2-3006 (B); *Grievance Procedure Manual* § 7.3(a). Any such appeal must be based on the assertion that the final hearing decision is contradictory to law. *Id.*; *see also* Virginia Dep’t of State Police v. Barton, 39 Va. App. 439, 445, 573 S.E.2d 319, 322 (2002). Any party to a grievance may contact this Department toll-free at 1-888-232-3842 for more information about the grievance process.