

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: May 20, 2009; Ruling #2009-2251; Agency: Department of Criminal Justice Services; Outcome: Grievant Not In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Criminal Justice Services
Ruling Number 2009-2251
May 20, 2009

The grievant has requested a compliance ruling on whether his February 23, 2009 grievance with the Department of Criminal Justice Services (the agency) is untimely. The agency alleges that the grievance was not initiated within 30 calendar days.

FACTS

The grievant is employed by the agency as an Administrative and Program Specialist III. On December 19, 2008, the grievant asked the agency for acting pay, as he had been performing additional duties since June 2008. In response to this request, on January 23, 2009, the agency advised the grievant that a temporary pay increase of ten percent had been approved, effective October 25, 2008. That same day, the grievant informed the agency that he did not consider the October 25, 2008 effective date for the pay increase to be sufficient compensation and stated that he would "appeal this decision."

On February 23, 2009, the grievant initiated a grievance challenging the agency's response to his request for acting pay. In an attachment to his grievance Form A, the grievant challenged the October 25, 2008 start date for his acting pay increase, and requested as relief compensation retroactive to June 25, 2008. The agency administratively closed the grievance for non-compliance, asserting that the grievant had failed to initiate his grievance within 30 calendar days of learning of the disputed pay decision. The grievant has appealed the agency's action to this Department.

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.

The grievant was aware of the agency's decision regarding his request for acting pay on January 23, 2009. Consequently, he should have initiated his grievance to challenge that action within 30 calendar days, i.e., by February 22, 2009. Because he did not, his grievance to challenge that matter is untimely. The only remaining question is whether there was just cause for his delay.

This Department has made repeated attempts to contact the grievant to determine if just cause exists in this matter.² The grievant has not responded to those attempts or proffered any just cause basis. Accordingly, 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.³

Claudia T. Farr
Director

² The investigating consultant assigned to this ruling left a message at the grievant's home phone number and sent two e-mails to the grievant's personal e-mail account.

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