

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: June 1, 2009; Ruling #2009-2301; Agency: Department of Corrections; Outcome: Agency In Compliance (in part), Agency Not In Compliance (in part).



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Corrections
Ruling Number 2009-2301
June 1, 2009

The grievant has requested a compliance ruling in her April 9, 2009 grievance with the Department of Corrections (DOC or the agency). The agency asserts that the grievant did not initiate her grievance within the 30-calendar-day time period required by the grievance procedure. For the reasons discussed below, the grievance is timely in part and untimely in part.

FACTS

The grievant was employed by the agency as a Transportation Officer. On March 4, 2009, the grievant was involved in a heated discussion with a co-worker, which led to her submitting an incident report on March 5, 2009. The grievant alleges that on that same day, she was told that she was being removed from Transportation. On April 9, 2009, the grievant initiated a grievance challenging the agency's alleged failure to respond to the March 5th incident report or to take action against the other employee about his alleged verbal abuse, as well as her alleged "improper[]" removal, without explanation, from Transportation on March 5th.

By letter dated April 20, 2009, the agency advised the grievant that it was administratively closing her grievance due to noncompliance. In particular, the agency asserts that the grievant failed to initiate her grievance within 30 calendar days of the date she was allegedly removed from Transportation. The grievant has appealed to this Department.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date 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-

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

calendar-day period without just cause, the grievance is not in compliance with the grievance procedure and may be administratively closed.²

In this case, the grievant is apparently challenging not only her removal from Transportation, which she acknowledges occurred on March 5, 2009, but also management's alleged failure to respond to her complaint about her co-worker and to provide her with an explanation for her removal from Transportation. While the agency is correct that her grievance was initiated more than 30 calendar days after the March 5th removal from Transportation, her grievance was timely with respect to what the grievant alleges was an ongoing and continued failure to respond to her complaint and to explain the reasons for her reassignment.

The only remaining issue is whether there was just cause for the grievant's delay in challenging her alleged removal from Transportation. The grievant alleges that she was waiting on the agency to respond to her request for the reason for her removal, and she believes the agency was waiting for the 30-day period to lapse. While the grievant's conduct may be understandable, it does not constitute just cause for failing to challenge her March 5th removal within 30 calendar days. This Department has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.³ 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.

CONCLUSION

For the reasons discussed above, this Department has determined that the grievant timely challenged the agency's alleged ongoing failure to respond to her complaint regarding her co-worker and to provide her with an explanation for her reassignment. However, the grievant's challenge to her apparent removal from Transportation was made outside the 30-day period and that portion of her grievance may be administratively closed by the agency. By copy of this ruling, the parties are advised that within five workdays of the receipt of this ruling, the first-step respondent must respond to the grievance as set forth in this ruling. This Department's rulings on matters of compliance are final and nonappealable.⁴

Claudia T. Farr
Director

² *Grievance Procedure Manual* § 2.4.

³ *E.g.*, EDR Ruling No. 2009-2079; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

⁴ *See* Va. Code § 2.2-1001(5), 2.2-3003(G).