

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: September 24, 2009; Ruling #2010-2416; Agency: Department of General Services; Outcome: Grievant Not In Compliance.



**COMMONWEALTH of VIRGINIA**  
**Department of Employment Dispute Resolution**

**COMPLIANCE RULING OF DIRECTOR**

In the matter of Department of General Services  
Ruling Number 2010-2416  
September 24, 2009

The grievant has requested a ruling on whether her August 25, 2009 grievance with the Department of General Services (the agency) is in compliance with the grievance procedure. The agency asserts that the grievance does not comply with the grievance procedure because it was not initiated timely. For the reasons set forth below, this Department determines that the grievance is untimely and may be administratively closed.

FACTS

In her grievance, the grievant has challenged, among other issues, her layoff. The grievant was given initial notice of her layoff on or around May 5, 2009. The effective date of her layoff was on or around June 25, 2009. Shortly before her layoff, the grievant had surgery. That surgery resulted in certain complications, for which the grievant received treatment in a hospital until June 22, 2009, when she was released. However, the grievant continued to be affected by certain symptoms, specifically blurred vision. The grievant submitted a disability claim on June 24, 2009. She signed her final notice of layoff, which was mailed to her, on June 26, 2009. The grievant also met in-person with a member of the agency's human resources staff to complete an "Outprocessing Checklist" on June 29, 2009.

The grievant states she e-mailed her grievance to the agency on or around August 25, 2009.<sup>1</sup> She also delivered the grievance by hand on August 27, 2009. At the second resolution step, the agency administratively closed the grievance due to noncompliance for failing to initiate the grievance in a timely manner. The grievant now appeals that determination.

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.<sup>2</sup> When an employee initiates a grievance beyond the 30

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<sup>1</sup> Because an e-mailed Grievance Form A would effectively initiate a grievance when sent to an agency, we will use this date as the initiation date of the grievant's grievance. Whether the actual initiation date is considered to be August 25<sup>th</sup> or August 27<sup>th</sup>, this difference of two days does not affect the outcome of this ruling.

<sup>2</sup> 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.

In this case, the event that forms the basis of this grievance is a layoff. As EDR has previously held, the event forming the basis of such a grievance is the actual layoff, not the notice that such an action would likely occur in the future.<sup>3</sup> The effective date of the grievant's layoff was on or about June 25, 2009. Therefore, she should have initiated her grievance within 30 days, i.e., no later than July 25, 2009. Because the grievant did not initiate her grievance until August 25, 2009, the challenge to the layoff is untimely. The only remaining issue is whether there was just cause for the delay.

This Department has long held that illness or impairment does not automatically constitute "just cause" for failure to meet procedural requirements. To the contrary, in most cases it will not.<sup>4</sup> Illness may constitute just cause for delay only where there is evidence indicating that the physical or mental impairment was so debilitating that compliance with the grievance procedure was virtually impossible.<sup>5</sup>

While this Department is sympathetic to the symptoms the grievant experienced and continues to experience, the evidence does not support a finding that the grievant was incapacitated to the point that she was unable to protect her grievance rights at any time during the 30-day period following her layoff. Indeed, shortly after leaving the hospital, the grievant was able to submit a disability claim, sign the final notice of layoff form, and meet with the agency to complete the "Outprocessing Checklist." Because the grievant's symptoms would presumably have been the most serious during that period and she was able to complete these tasks, this Department is unable to find that any impairment she may have experienced was so debilitating that she could not protect her grievance rights. There is no evidence that the grievant made any attempt to file a grievance or request an extension until well after the 30-day period had lapsed.

### 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.<sup>6</sup>

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Claudia T. Farr  
Director

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<sup>3</sup> *E.g.*, EDR Ruling No. 2004-784.

<sup>4</sup> *See* EDR Ruling No. 2006-1201; EDR Ruling Nos. 2003-154, 155.

<sup>5</sup> *Id.*; *see also* EDR Ruling No. 2005-1040.

<sup>6</sup> *See* Va. Code §§ 2.2-1001(5), 2.2-3003(G).