

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: December 29, 2009; Ruling #2010-2479; Agency: Virginia Commonwealth University; Outcome: Grievant Not In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Virginia Commonwealth University
Ruling Number 2010-2479
December 29, 2009

The grievant has requested a ruling on whether her November 30, 2009 grievance with Virginia Commonwealth University (VCU or the university) is in compliance with the grievance procedure. The university asserts that the grievance does not comply with the grievance procedure because it 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 October 27, 2009, the grievant received a Group II Written Notice for her alleged mishandling of university funds. The grievant challenged the disciplinary action by filing a grievance on November 30, 2009.¹ The university subsequently 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.² 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.

Here, the event that forms the basis of the grievance is the agency's issuance of the Written Notice. This Department has long held that in a grievance challenging a

¹ According to the university, although the grievance is dated November 30, 2009, it was not actually received by management until December 1, 2009. However, as explained in more detail below, whether the actual initiation date is considered to be November 30th or December 1st, does not affect the outcome of this ruling. Accordingly, this Department will use the date of November 30th as the initiation date.

² Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4.

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 Group II Written Notice on October 27, 2009, and, thus, should have initiated this grievance within 30 calendar days, i.e., no later than November 26, 2009. The grievant did not initiate the grievance until November 30, 2009, which was 34 calendar days after the Written Notice was issued and, thus, untimely. The only remaining issue is whether there was just cause for the delay.

The grievant asserts the following reasons for her delay in initiating her grievance: (1) she was “trying to figure out the best way to response [sic] to this [written] notice and to gather information”; (2) she was ill during the 30 calendar-day period following her receipt of the written notice; and (3) the Thanksgiving holiday prevented her from timely initiating her grievance.

First, while the grievant may have felt the need to take some time to consider her best course of action and to gather information prior to initiating her grievance, such rationalizations do not constitute just cause for the delay in initiating a grievance to challenge the disciplinary action. Further, 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.⁴ 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.⁵ While this Department is sympathetic to the symptoms the grievant experienced,⁶ 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 receipt of the Group II Written Notice. In fact, the grievant did not actually become ill until November 20th, which was 23 days after her receipt of the written notice.

Finally, the 30th day for filing the grievance in this case fell on Thanksgiving. The fact that the 30th day falls on a weekend or on a state holiday does not extend the deadline for 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. This Department, therefore, concludes that the grievant has failed to demonstrate just cause for her delay.

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

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

⁵ *Id.*; *see also* EDR Ruling No. 2005-1040.

⁶ According to the grievant, she became physically ill from “toxic smelling chemical[s]” used to clean her office carpet after it flooded. The grievant asserts that the smell “left a foul taste in [her] mouth”, affected her breathing and heart rate, and caused her to vomit and feel dizzy.

⁷ *See* EDR Ruling No. 2006-1201; EDR Ruling No. 2003-118.

⁸ *See, e.g.*, EDR Ruling No. 2006-1349, 2006-1350; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

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.⁹

Claudia T. Farr
Director

⁹ See Va. Code §§ 2.2-1001(5), 2.2-3003(G).