

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: January 19, 2010; Ruling #2010-2491; Agency: Department of Corrections; Outcome: Grievant Not in Compliance (in part), Grievant 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 2010-2491  
January 19, 2010

The grievant has requested a ruling on whether her November 18, 2009 grievance with the Department of Corrections (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 timely initiated. For the reasons set forth below, this Department determines that the grievance is, in part, timely.

FACTS

In her November 18, 2009 grievance, the grievant challenged her 2009 annual performance evaluation, which the grievant asserts she received on October 18, 2009. She also appears to have challenged several other performance-related management actions, including substandard performance notices that date back to 2008. Of these grieved actions, only one appeared to have occurred within the 30 calendar day period prior to the initiation of the grievance, the issuance of a Notice of Improvement Needed/Substandard Performance form that the grievant received on October 29, 2009 ("10/29/09 NINSP"). Noting the 2008 and September 2, 2009 dates of agency actions, the agency appears to have rejected the entire grievance.

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>1</sup> 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, only one of the events that forms the basis of the grievance, the 10/29/09 NINSP, is timely. All other events, including receipt of the annual evaluation occurred more

---

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

than 30 calendar days before the initiation of the grievance.<sup>2</sup> Accordingly, the agency is not required to address any of the issues grieved except the 10/29/09 NINSP.

### CONCLUSION

By copy of this ruling, the parties are advised that within five workdays of receipt of this ruling, the first step respondent is directed to respond the grievant's concerns regarding the 10/29/09 NINSP.<sup>3</sup> The agency is not required to address any of the remaining issues grieved as they were not timely grieved. This Department's rulings on matters of compliance are final and nonappealable.<sup>4</sup>

---

Claudia T. Farr  
Director

---

<sup>2</sup> The grievant asserts that she presented her annual performance evaluation to her supervisor on October 18, 2009 and that she initiated her grievance on November 18, 2009, which she claims was "exactly 30 days after issuance." November 18, 2009 was the 31<sup>st</sup> day following October 18, 2009, not the 30<sup>th</sup>.

<sup>3</sup> It appears that the first step respondent, in addition to noting the 30-day compliance issue, nevertheless provided a substantive response to the annual performance evaluation stating that it was based on NINSPs "submitted during the review period." The October 10/29/09 NINSP was issued after the annual evaluation took place and after the performance evaluation cycle presumably ended, on October 24, 2009. (*See* the Department of Human Resource Management Policy 1.40 which defines the "performance evaluation cycle" as "[t]he annual cycle during which an employee's supervisor documents performance, usually beginning October 25th of each year." Thus, it appears as though the October 10/29/09 NINSP has not been addressed.

<sup>4</sup> *See* Va. Code § 2.2-1001(5); Va. Code § 2.2-3003(G).