

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: May 5, 2010;
Ruling #2010-2590, 2010-2591; Agency: George Mason University; Outcome:
Grievant Not In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of George Mason University
Ruling Numbers 2010-2590, 2010-2591
May 5, 2010

The grievant has requested a ruling on whether her December 15, 2009 and January 21, 2010 grievances with George Mason University (the University) are in compliance with the grievance procedure. The agency asserts that the grievances do not comply with the grievance procedure because they were not initiated timely. For the reasons set forth below, this Department determines that the grievances are untimely and may be administratively closed.

FACTS

In the December 15, 2009 grievance (Grievance IV), the grievant challenges the University's apparent failure to provide her with a performance evaluation for the 2008 cycle. It appears that the grievant first raised the issue with the University in December 2008. At that point, the University's human resources office told the grievant that there was no financial impact in not having a 2008 performance evaluation on file. The grievant began raising the issue again in late 2009, seeking input from the Department of Human Resource Management. A Consultant for Policy at DHRM told the grievant that the University should have issued her an evaluation in 2008 and could still do so now. It also appears that others at DHRM informed the University that there was no harm in not issuing the grievant a 2008 performance evaluation at that point as the grievant's performance status for 2008 would default to "contributor" (i.e., satisfactory) in the Personnel Management Information System (PMIS). The University informed the grievant on December 12, 2009 that it would not be issuing her a 2008 performance evaluation because it would be "after the fact and unproductive." Thereafter, the grievant initiated Grievance IV on or about December 15, 2009.

In her January 21, 2010 grievance (Grievance V), the grievant raises issues that began in August 2008. At that point, following allegations of misconduct, the grievant was purportedly removed from the workplace and placed on administrative leave. She was eventually returned to work and placed in a new position on November 11, 2008. On or about January 21, 2010, shortly before her termination, the grievant submitted Grievance V to challenge the agency's actions in 2008. The agency has closed both Grievance IV and Grievance V due to the grievant's apparent failure to initiate them timely. The grievant appeals the agency's determinations.

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.

Grievance IV

Because Grievance IV involves the University's alleged failure to issue the grievant a 2008 performance evaluation, i.e., an inaction, the question of when an employee should have known that the University was not going to complete her evaluation can be difficult. An agency's actions or statements could understandably extend an employee's expectations for when such an event is to occur. For example, if an agency told an employee that it would complete a performance evaluation by December 1st, the 30-day period would be extended for the reasonably applicable time based on the agency's conduct or statements.

In this case, once the grievant brought the failure to receive a performance evaluation to the University's attention in December 2008, she was given no indication that the evaluation would be forthcoming. Even if the University was mandated by policy to continue to provide the evaluation, the grievant should have known, as the months of 2009 passed without follow-up, the University was not going to provide her with a 2008 performance evaluation. The grievant was, therefore, aware much longer than 30 days prior to the initiation of Grievance IV that the agency had failed to provide her a 2008 performance evaluation, making her December 15, 2009 grievance about the matter untimely. Further, there is no evidence that anything prevented her from filing this grievance earlier. As such, the grievance must be considered untimely and there is no just cause for the delay.

Grievance V

Grievance V concerns the grievant's placement on administrative leave and eventual reassignment to a new position on November 11, 2008. Therefore, she should have initiated her grievance within 30 days, i.e., no later than December 11, 2008. Because the grievant did not initiate her grievance until January 21, 2010, the challenge to her reassignment is untimely. The only remaining issue is whether there was just cause for the delay.

The grievant states that she never received due process notice of any charges against her regarding the issues that led to her placement on administrative leave and reassignment. As such, she asserts she had nothing to grieve at that time. However, the grievant's argument is unpersuasive. Whether or not any due process notice was issued, the grievant was well aware of her placement on administrative leave and reassignment. If she wished to challenge either of

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

those actions, she should have initiated a grievance within 30 days. Because she failed to do so, her grievance is untimely and there is no just cause for the delay.

CONCLUSION

For the reasons set forth above, this Department concludes that the December 15, 2009 grievance (Grievance IV) and the January 21, 2010 grievance (Grievance V) were not timely initiated and there is no evidence of just cause for the delay. The parties are advised that the grievances 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.²

Claudia T. Farr
Director

² See Va. Code §§ 2.2-1001(5), 2.2-3003(G).