

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: May 10, 2010; Ruling #2010-2626; Agency: Department of Behavioral Health and Developmental Services; Outcome: Grievant Not In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Behavioral Health and Developmental Services
Ruling Number 2010-2626
May 10, 2010

The grievant has requested a ruling on whether her April 12, 2010 grievance with the Department of Behavioral Health and Developmental Services (“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 untimely and may be administratively closed.

FACTS

On March 11, 2010, the grievant received a Group II Written Notice with termination for alleged inaccurate documentation of a medical event. The grievant challenged the disciplinary action by filing a grievance on April 12, 2010.¹ The agency subsequently administratively closed the grievance due to noncompliance by 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 disciplinary action, the 30 calendar-day timeframe begins on the date that management

¹ According to the agency, although the Grievance Form A is dated April 9, 2010, it was not actually received by management until April 12, 2009. The grievant does not appear to contest that the Grievance Form A was not presented to management until April 12th.

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

presents or delivers the Written Notice to the employee.³ The grievant received the Group II Written Notice on March 11, 2010 and, thus, should have initiated this grievance within 30 calendar days, i.e., no later than April 10, 2010. The grievant did not initiate the grievance until April 12, 2010, which was 32 calendar days after the Written Notice was issued and, thus, untimely.⁴ The only remaining issue is whether there was just cause for the delay.

The grievant asserts that on March 9, 2010, she had authorized a non-lawyer representative to serve as her advocate. The grievant further asserts that on March 10, 2010, the grievant, apparently through her advocate, responded to a March 8, 2010 letter of intent to terminate her employment. The grievant asserts that the March 8, 2010 letter is “part and parcel of the March 11, 2010 grievance process” and that the March 10th response was timely and should have been followed by a meeting between the grievant, her advocate, and the agency prior to the issuance of the March 11, 2010 Written Notice. In sum, the grievant asserts that:

The challenged action of the grievant filing a request for hearing/meeting within two days of the March 8, 2010 letter intent [sic] to terminate and prior to the issuance of the March 11, 2010 letter of termination, should be considered timely filed and the EDR should provide a hearing to the grievant and her advocate.

As an initial point, the grievant apparently had a meeting on March 10, 2010 with the agency to discuss the proposed termination of her employment.⁵ (While the grievant’s newly appointed advocate may not have been in attendance at that meeting, this Department is unaware of any provision of state policy that requires an agency to allow an advocate to be in attendance at what is essentially a pre-termination due process meeting.) More to the point, the act that the grievant appears to be challenging is the actual termination of her employment, which occurred on March 11, 2010, when the agency presented her with the Written Notice. The grievant did not initiate her grievance until more than 30-days had lapsed from receiving the Written Notice. Sending the agency a notice that she had retained an advocate did not constitute initiating a grievance nor did it extend the time that she had to file her grievance. The grievant’s advocate’s request for a second meeting did not constitute initiation of the grievance nor did it extend the timeframe for filing the grievance. Any failure by the agency to provide the grievant with a second meeting did not violate any policy requirement nor did it extend the grievance filing deadline. The Grievance Procedure Manual plainly instructs that “[a]n employee must initiate a grievance on a fully completed ‘Form A,’”⁶ which did not

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

⁴ This Department has consistently applied the 30-day rule strictly and has long held that the fact that the 30th day falls on a weekend does not extend the 30-day deadline for initiating a grievance. EDR Ruling Nos. 2006-1349, 1350; 2006-1201; 2003-118; and 99-204.

⁵ The grievant’s newly appointed advocate appears to have requested a second meeting and it appears this is the meeting that he claims should have occurred prior to her termination.

⁶ *Grievance Procedure Manual* § 2.4.

occur until 32 days after her termination. The rationale proffered by the grievant and her advocate simply does not constitute just cause for the untimely initiation of this grievance.

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.⁷

Claudia T. Farr
Director

⁷ See Va. Code §§ 2.2-1001(5), 2.2-3003(G).