

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: June 2, 2010; Ruling #2010-2647; Agency: Department of Corrections; Outcome: Grievant In Compliance.



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of Department of Corrections  
Ruling Number 2010-2647  
June 2, 2010

The grievant has requested a ruling on whether his April 13, 2010 grievance with the Department of Corrections (DOC or 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 was timely initiated.

FACTS

The grievant is employed as a Sergeant with DOC. On November 9, 2009, as part of a layoff and placement process, the grievant accepted in writing a notice of placement into a Security Manager I (i.e., Lieutenant) position.<sup>1</sup> Shortly after signing the notice of placement into a Lieutenant position, the grievant was involved in an accident that resulted in his absence from work for an extended period of time. He eventually returned to work on March 15, 2010 at the facility indicated in the November 9, 2009 notice of placement. When he got there, he was referred to as a Sergeant. The grievant informed the human resource office that he had accepted a Lieutenant position, not a Sergeant position. The grievant was informed the following day, March 16, 2010, that the November 9, 2009 notice of placement contained a typographical error in that it stated he was being offered placement into a Lieutenant position when in actuality he was being offered a Sergeant position.<sup>2</sup> The grievant initiated a grievance on April 13, 2010 challenging the agency's actions.

On April 29, 2010, 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.

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<sup>1</sup> At the time of the offer of placement the grievant was in a Sergeant position. However, he had previously occupied a Lieutenant position, but through a prior layoff process had been placed into a Sergeant position.

<sup>2</sup> The agency attempted to correct its error by giving the grievant a revised notice of placement on March 17, 2010 indicating that the grievant was offered placement into a Sergeant position, which he refused to sign.

### 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>3</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, the agency claims that the grievant should have initiated his grievance within 30 calendar days of November 9, 2009, the day he received his notice of placement. This Department disagrees. The grievant is not challenging the notice of placement received on November 9, 2009. The grievant's April 13<sup>th</sup> grievance challenges the agency's failure to place him in a Lieutenant position in accordance with the November 9, 2009 notice of placement. He was not notified by the agency that the November 9<sup>th</sup> notice of placement was an error and that he would not be placed in a Lieutenant position until he arrived at work on March 15, 2010. As such, the grievant had 30 calendar days from this date, or until April 14, 2010, to initiate his grievance. Because he initiated his grievance on April 13, 2010, the grievance is timely and must be allowed to proceed.<sup>4</sup>

### CONCLUSION

Based on the foregoing, the grievant and the agency are advised that the grievant has **10 workdays from the date of this ruling** to advance his grievance to the first resolution step, at which point the agency must address all issues raised in the April 13<sup>th</sup> grievance. This Department's rulings on matters of compliance are final and nonappealable.<sup>5</sup>

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Claudia T. Farr  
Director

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<sup>3</sup> Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4.

<sup>4</sup> The agency asserts that the grievant knew or should have known, despite what the notice of placement expressly stated, that he was actually being offered placement into a Sergeant position, not a Lieutenant position. This Department's decision on timeliness does not assess what the grievant knew or should have known in November 2009 because the events of November 9, 2009 are not pertinent to this Department's timeliness determination. As such, nothing in this ruling precludes the agency from claiming that the grievant knew or should have known in November that he was being placed in a Sergeant position. This ruling merely finds that the April 13<sup>th</sup> grievance was timely initiated for purposes of the grievance procedure and must be allowed to proceed through the management resolution steps of the grievance process.

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