

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: July 28, 2010; Ruling #2010-2661; Agency: Virginia Employment Commission; Outcome: Request Premature.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Virginia Employment Commission
Ruling Number 2010-2661
July 28, 2010

The grievant has requested a ruling on whether her grievance with the Virginia Employment Commission (VEC or the agency) was timely filed in compliance with the grievance procedure.

FACTS

The grievant is employed as a Program Administration Specialist II with VEC. In September 2009, the grievant took on additional duties and responsibilities due to the departure of a fellow supervisor. As a result of the increased duties, the grievant's supervisor requested a temporary pay increase of 3% for the grievant for the period of March 1, 2010 through July 1, 2010. Per policy, the request was sent to the Regional Director for approval. According to the grievant, she asked her supervisor on March 30, 2010 whether the request for a temporary pay increase had been approved. Her supervisor informed the grievant at that time that the request had been denied by the Regional Director.

The grievant initiated a grievance on May 4, 2010¹ challenging the agency's denial of her request for a temporary pay increase as discriminatory and inconsistent with similar decisions in the past. At the first management resolution step of the grievance process, the first step respondent indicated that (i) the grievance was initiated outside of the required 30 calendar day time period,² and (ii) the agency would allow the grievance to proceed through the management resolution steps, but would later deny qualification, in part, due to this noncompliance. The grievant now requests a ruling on whether she timely initiated her May 4, 2010 grievance.

¹ The grievance is dated May 4, 2010 however the first resolution step respondent claims that the grievance was not actually received until May 6, 2010. Because the actual date of receipt of the grievance by the first step respondent is immaterial and does not affect the outcome here, this ruling will consider the initiation date as May 4, 2010.

² More specifically, the agency appears to assert that the grievant should have initiated her grievance within 30 calendar days of March 30, 2010, the day she was informed that her request for a pay increase had been denied.

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.³ 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. If the agency administratively closes the grievance on the basis of noncompliance with the 30 calendar day requirement, the grievant has the right to request a ruling from this Department to overturn the closure of the grievance.⁴ However, the grievance procedure further states that “[t]o promote improved employee relations, management may allow a grievance to proceed through the resolutions steps, even if the grievance does not comply with the [30 calendar day requirement]. If the agency intends to allow the grievance to proceed through the management steps but plans to deny a hearing due to noncompliance, management should inform the employee of that intention as soon as it becomes aware of the noncompliance.”⁵

In this case, the agency has expressed its belief that the grievance was not timely initiated, but has not administratively closed the grievance on this basis. On the contrary, the agency has indicated that it will allow the grievance to proceed through the management resolution steps of the grievance process despite the alleged noncompliance at initiation. Accordingly, a ruling on whether the grievance was timely initiated is premature at this point. However, if the agency later denies qualification or administratively closes the grievance on the basis of noncompliance with the 30 calendar day requirement, the grievant may renew her request for a ruling from this Department regarding whether she initiated her grievance within the mandated 30 calendar days.

Based on the foregoing, this Department orders the grievant **within ten work days of the date of this ruling** to notify her human resources office in writing that she wishes either to conclude her grievance or advance the grievance to the second resolution step of the grievance process. This Department’s rulings on matters of compliance are final and nonappealable.⁶

Claudia T. Farr
Director

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

⁴ *Grievance Procedure Manual* § 2.4.

⁵ *Id.*

⁶ *See* Va. Code § 2.2-1001(5); 2.2-3003(G).