

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: June 30, 2010; Ruling #2010-2678; Agency: Department of Corrections; Outcome: Grievant in Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Virginia Department of Corrections
Ruling Number 2010-2678
June 30, 2010

The grievant has requested a compliance ruling in her May 4, 2010 expedited grievance with the Virginia Department of Corrections (DOC or the agency).¹ The agency asserts that the grievant did not initiate her grievance within the 30 calendar day time period required by the grievance procedure. For the reasons discussed below, the grievance is timely.

FACTS

The grievant is employed as an Office Service Assistant. On April 12, 2010, the grievant was separated from employment. On May 4, 2010, the grievant attempted to initiate a grievance by mailing her Grievance Form A to this Department. The grievance never arrived because the agency had provided the grievant with a Grievance Form A containing this Department's former address. It was returned to the grievant by the U.S. Postal Service, who subsequently forwarded it to DOC. DOC contends that the grievance is untimely because it did not receive the Form A within 30 calendar days of the grievant's receipt of the disciplinary action.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date 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. Importantly here, this Department has consistently held that a grievance initiated in a timely manner but with the wrong party will

¹ The grievance is dated May 3, 2010 but was apparently postmarked May 4, 2010.

² Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4 (1).

not bar a grievance for noncompliance.³ Further, the initiation date of a mailed grievance is the postmark or mail date—the receipt date is immaterial.⁴

In this case, the event that forms the basis of the grievance is the grievant's receipt of the disciplinary action on April 12, 2010. Thus, the grievant should have initiated her grievance within thirty calendar days of April 12, 2010. As noted above, the grievant first mailed her grievance to this Department on May 4, 2010, which is considered the initiation date. The fact that this Department did not receive the grievance is, under the facts of this case, not dispositive. The agency provided the grievant with a form containing the wrong address. Moreover, the grievant has provided evidence that the Grievance Form A was timely filed, albeit to the wrong address.

Furthermore, as noted above, this Department has long held that that a grievance initiated in a timely manner but with the wrong party will not bar a grievance for noncompliance.⁵ Based on the facts of this case, and this Department's precedent, this grievance cannot be barred on the basis of untimeliness.

CONCLUSION

Within 5-workdays of receipt of this ruling, the agency is ordered to set up a second step meeting with the grievant. This Department's rulings on matters of compliance are final and nonappealable.⁶

Claudia T. Farr
Director

³ EDR Ruling Nos. 2007-1686; 2006-1114; 2004-645; 2001-230.

⁴ For purposes of establishing when a mailed grievance was initiated, the postmark date is considered the initiation date. *Grievance Procedure Manual*, § 2.4.

⁵ See EDR Ruling #2006-1256, 2006-1257.

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