

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: July 16, 2010; Ruling #2011-2692; Agency: Department of Behavioral Health and Developmental Services; Outcome: Grievant In Compliance.



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of the Virginia Department of Behavioral Health and Developmental Services  
Ruling Number 2011-2692  
July 16, 2010

The grievant has requested a compliance ruling in her May 7, 2010 expedited grievance with the Virginia Department of Behavioral Health and Developmental Services (the agency). 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.<sup>1</sup>

FACTS

The grievant is employed as a Registered Nurse. The grievant has raised a number of issues in a grievance dated May 7, 2010. On May 7, 2010, the grievant attempted to initiate her grievance by faxing her Grievance Form A to this Department. The same day, this Department attempted to contact the grievant by phone and e-mail. When these attempts were unsuccessful, this Department sent, on May 14, 2010, a letter to the grievant requesting that she contact us. On May 24, 2010, the grievant attempted to contact this Department. When this Department attempted to return her call, she did not answer so the calling consultant left a message. On May 26, 2010, the grievant called this Department but missed the consultant. Later that day, the consultant attempted to return the grievant's call but they did not connect so the consultant left a voice message for the grievant that she needed to speak with her about the grievance documents that she had faxed to this Department. On June 21, 2010, the consultant was finally able to speak with the grievant to inform her that the grievance needed to be initiated with the agency instead of this Department. The grievant faxed her grievance to the agency on June 25, 2010. The agency seems to contend that the grievance is untimely because it did not receive the Form A within 30 calendar days of the date that the grievant identifies as the date the grievance occurred, April 21, 2010.

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<sup>1</sup> This ruling address only the issue of timeliness as it relates to the grievant's presentation of her grievance to the agency, which appears to be the only basis that the agency has challenged the grievance.

### 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.<sup>2</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. Importantly here, this Department has consistently held that a grievance initiated in a timely manner but with the wrong party will not bar a grievance for noncompliance.<sup>3</sup>

Evidence exists that the Grievance Form A was filed, albeit with this Department rather than the employing agency, within 30 calendar days of the date the grievant identifies as the date that the grievance occurred, April 21, 2010. The grievant first mailed her grievance to this Department on May 7, 2010, which is considered the initiation date. 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.<sup>4</sup> Based on the facts of this case, and this Department's precedent, this grievance cannot be barred on the basis of untimeliness as it relates to the date that the grievance was presented to the agency.<sup>5</sup>

### 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.<sup>6</sup>

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Claudia T. Farr  
Director

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

<sup>3</sup> EDR Ruling Nos. 2007-1686; 2006-1114; 2004-645; 2001-230.

<sup>4</sup> See EDR Ruling #2006-1256, 2006-1257.

<sup>5</sup> Again, this ruling addresses only the issue of timeliness as it relates to the date the grievant presented her Form A to this Department (May 7, 2010) and, subsequently, the agency. This ruling does not address timeliness as it relates to whether any of the grieved actions took place more than 30 days prior to May 7, 2010. If the agency seeks to object to the grievance on any aspect of timeliness other than the issue relating to when the Form A was presented, the agency may raise any such objection with this Department in a renewed ruling request.

<sup>6</sup> See Va. Code §§ 2.2-1001 (5), 2.2-3003(G).