

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: August 20, 2010; Ruling #2011-2707; Agency: Department of General Services; Outcome: Grievant in Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of General Services
Ruling Number 2011-2707
August 20, 2010

The grievant has requested a ruling on whether his June 10, 2010¹ grievance with the Department of General Service (DGS 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 grievance is timely.

FACTS

The grievant is employed as a Trades Technician III with the agency. On April 26, 2010, the grievant was given a "Notice of Layoff or Placement" ("the Notice"). The Notice informed the grievant that he was being laid off from his current position, but was being offered placement into another Trades Technician III position in a different department within the agency. The Notice further informed the grievant that he had until May 11, 2010 to either accept or deny the placement offer. The Notice indicated that the effective date of the placement would be June 28, 2010; however, the effective date was changed at some point to reflect that the effective date of the placement in his new position would be May 10, 2010, not June 28th.²

On June 10, 2010, the grievant initiated a grievance challenging his placement. The agency administratively closed the June 10, 2010 grievance for failure to comply with the 30 calendar day requirement of the grievance process. The grievant is now appealing the agency's determination.

¹ The grievance is signed and dated May 10, 2010. However, during this Department's investigation, the grievant indicated that he incorrectly dated the grievance May 10th and that it should have been dated June 10, 2010. More importantly, all parties agree that the grievance was received by the agency on June 10, 2010.

² The exact date of and reason for the change of the effective date is unclear in this case. However, the date of the change and reason for the change is immaterial to this Department's determination of whether the grievance was initiated within 30 calendar days and therefore will not be addressed further.

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.

Here, the event that forms the basis of the June 10, 2010 grievance is the grievant's placement into the same role in a different department within DGS. According to the agency, the grievant knew of his placement on April 26, 2010, the day he signed the Notice and as such, he should have initiated his grievance within 30 calendar days of this date, or not later than May 26, 2010. For the reasons discussed below, this Department disagrees.

As noted above, the grievant is challenging his placement into the new position. As EDR has previously held in analogous cases, the event forming the basis of such a grievance is the actual effective date of the placement, not the Notice that was received on April 26, 2010 that such an action would likely occur in the future.⁴ Although the grievant was given his offer of placement on April 26, 2010, he was not required to initiate a grievance challenging the placement process until that process was complete. Rather than requiring a grievant to separately challenge individual actions leading up and contributing to a placement due to layoff, the interests of uniformity support allowing a grievant who is offered placement through the layoff process to grieve once the placement is final. An employee is not prevented from initiating a grievance prior to the actual date of placement, but he/she will not be required to do so. Consequently, as long as a grievant has initiated a grievance within 30 calendar days of his/her effective date of placement, the grievance will be considered timely. Accordingly, the question here is when did the grievant know or should have known of the effective date of his placement.

The Notice originally stated that the effective date of the placement would be June 28, 2010. This date was later changed to reflect an effective date of May 10, 2010.⁵ During this Department's investigation for this ruling, however the grievant denied ever having knowledge of an effective date of May 10, 2010 and said that his copy of the

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

⁴ EDR Ruling No. 2010-2416; EDR Ruling No. 2004-784. In challenges to layoffs, this Department has used the effective date of layoff (or placement) as the day the 30 day filing clock begins to run because, as was evidenced in this case by the apparent change in effective date, circumstances can change from the time the Notice is received by the employee and the time that he is actually laid off or begins work in the new position.

⁵ According to a member of the agency's human resource office, she "believes" the date was changed from June 28, 2010 to May 10, 2010 prior to being presented to the grievant on April 26, 2010. The agency also informed this Department that the effective date of placement in the state's Personnel Management Information System (PMIS) is May 10, 2010.

Notice, and the copy sent to this Department by the grievant for a compliance ruling, reflects an effective date of June 28, 2010. More importantly, it is undisputed that the Notice indicated that the grievant had until May 11, 2010 to either accept or deny the placement offered and that he was told on the morning of May 11, 2010 to report to his new position.

Based on the foregoing, this Department concludes that the grievant knew or should have known of his placement on May 11, 2010. The Notice reflected that the grievant had until May 11, 2010 to either accept or deny the placement offer. It would seem illogical for the effective date of placement to precede the date by which to accept the placement offered. Moreover, the grievant was told to report to his new position and supervisor when he arrived at work on the morning of May 11, 2010. Therefore, the grievant knew or should have known of his effective date of placement on May 11, 2010 and he should have initiated his grievance within 30 days of this date, i.e., no later than June 10, 2010. Because the grievant initiated his grievance on June 10, 2010, the challenge to his placement is timely.⁶

CONCLUSION

For the reasons set forth above, this Department concludes that the grievance was timely initiated and is allowed to proceed. This ruling in no way reflects the merits of the grievance, only that it is timely filed. The grievance package must be returned to the first step-respondent to be addressed at that level and proceed through the grievance process. This Department's rulings on matters of compliance are final and nonappealable.⁷

Claudia T. Farr
Director

⁶ In his grievance, the grievant also states that “[t]here are also some unfair hiring processes and other discriminating issues that have occurred during my 32 years at DGS.” While these other alleged acts of discrimination may be used as evidence in support of the grievant’s claim in his June 10th grievance that his placement was discriminatory, the grievant cannot be granted relief for alleged discriminatory actions that occurred more than 30 calendar days prior to June 10, 2010. In other words, the June 10, 2010 grievance is untimely to challenge those alleged discriminatory acts occurring prior to May 11, 2010.

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