

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: November 9, 2010; Ruling #2011-2729; Agency: Virginia Department of Transportation; Outcome: Grievant In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Transportation
Ruling Number 2011-2729
November 9, 2010

The grievant has requested a compliance ruling regarding her June 22, 2010 grievance with the Department of Transportation (VDOT or the agency). The agency asserts that the grievant did not initiate her June 22nd grievance within the 30-calendar day time period required by the grievance procedure. For the reasons set forth below, this Department concludes that the grievant had just cause for her failure to timely challenge the disciplinary action and as such, the agency improperly closed the June 22, 2010 grievance.

FACTS

The grievant is an Administrative and Office Specialist III with VDOT. On April 13, 2010, the grievant was issued a Group I Written Notice for her alleged unprofessional and disruptive behavior and for using obscene language and intimidating others. The grievant subsequently challenged the disciplinary action by initiating a grievance on June 22, 2010. When she initiated her grievance, the grievant was on short-term disability (STD) leave and had been on STD since April 14, 2010.

On June 29, 2010, the agency informed the grievant that her June 22nd grievance was being administratively closed because of her failure to timely initiate her grievance. In its closure notification, the agency recognized that the grievant was on STD during the time period following the issuance of the Group I Written Notice, but believes the STD leave should not have affected the grievant's ability to file a grievance in this matter because the grievant was "in contact with the agency throughout [her] short-term disability; [she] completed forms, and sent emails that included at least one scanned attachment." As such, the agency believes the grievant was capable of pursuing her grievance rights during this time period as well. The grievant now seeks a compliance ruling from this Department as to whether she timely initiated her June 22nd 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.¹ 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 event that forms the basis of the grievance is the agency's issuance of a Group I Written Notice to the grievant. This Department has long held that in a grievance challenging a disciplinary action, the 30 calendar-day timeframe begins on the date that management presents or delivers the Written Notice to the employee.² Here, on the day the written notice was issued, April 13, 2010, the grievant was not at work and she never returned to work due to her STD leave beginning on April 14, 2010. The agency however apparently contacted the grievant on April 13th and informed her of the issuance of the Written Notice and also mailed her a copy of the Written Notice that same day.³ Because the grievant's actual date of receipt of the Written Notice is not necessarily outcome determinative in this case, this Department will assume that the Written Notice was received on April 13, 2010 and as such, the grievant should have initiated her grievance within 30 calendar days of April 13, 2010, or by May 13, 2010. The grievant did not initiate her grievance until June 22, 2010, which was untimely. Thus, the only remaining issue is whether there was just cause for the delay.

The grievant asserts she was unable to timely file her grievance because of a physical and/or mental impairment. This Department has long held that illness or impairment does not automatically constitute "just cause" for failure to meet procedural requirements. To the contrary, in most cases it will not.⁴ Illness may constitute just cause for delay only where there is evidence indicating that the physical or mental impairment was so debilitating that compliance with the grievance procedure was virtually impossible.⁵ This evidence is best obtained through a health care provider's written determination.

Here, the grievant has presented a note from her physician indicating that the grievant was unable to make "work related decisions" in the 60 calendar days following the issuance of the Written Notice on April 13, 2010. Accordingly, this Department concludes that the grievant had just cause (i.e., her physical and/or mental impairment) for failing to initiate her grievance within 30 calendar days of her receipt of the Written Notice.⁶

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

² See EDR Ruling No. 2005-986; EDR Ruling No. 2003-147; EDR Ruling No. 2002-118; EDR Ruling No. 2002-001; EDR Ruling No. 2000-082; EDR Ruling No. 2000-003.

³ The grievant admits that she received a copy of the Written Notice in the mail shortly after the issuance date.

⁴ See EDR Ruling No. 2006-1201; EDR Ruling No. 2003-154 and 2003-155.

⁵ *Id.*; see also EDR Ruling No. 2005-1040.

⁶ In this case, the grievant filed her grievance just over a week after the expiration of the 60-day period of incapacity. Thus, the grievance will be considered timely.

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 her grievance to the first resolution step to address all issues raised in the June 22, 2010 grievance. This Department's rulings on matters of compliance are final and nonappealable.⁷

Claudia T. Farr
Director

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