

Issue: Compliance – Grievance Procedure (30 Day Rule); Ruling Date:
September 7, 2010; Ruling #2011-2759; 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 Department of Corrections
Ruling Number 2011-2759
September 7, 2010

The grievant has requested a ruling on whether his August 13, 2010 grievance with the Department of Corrections (“DOC” 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 Corrections Officer Senior with the agency. On May 31, 2010, the grievant was allegedly found to be in possession of a sexually explicit book that the agency deemed inappropriate for the workplace. On July 15, 2010, the grievant was presented with a Group II Written Notice that included a 5-day suspension. On August 13, 2010, the grievant initiated a grievance challenging the disciplinary action. He indicated that the date that the grievance occurred was May 31, 2010.

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.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.

Here, it is apparent that the event that forms the basis of the August 13, 2010 grievance is the grievant’s receipt of the July 15, 2010 Written Notice. As noted above, the grievant indicated on his Grievance Form A that the date that the grievance occurred

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

was May 31, 2010, the date that the agency discovered the book in question. However, when the grievance is viewed in its entirety, it is clear that the grievant is not grieving the agency's discovery of his book. Rather, he is challenging the Written Notice issued to him on July 15, 2010.² The fact that he listed the date that grievance occurred as May 31, 2010 will not serve as a bar to the advancement of this grievance. While we have previously held that parties are bound by the notations made on the Form A, beyond the erroneously listed "date grievance occurred," the remainder of the Form A makes it abundantly evident that the grievant is challenging the July 15, 2010 Written Notice.³ The August 13, 2010 grievance was initiated within 30 calendar days of the July 15th receipt of the Written Notice. Thus, this grievance timely challenged the Notice and shall be allowed to advance.

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 second step respondent who must schedule the second step meeting in accordance the grievance procedure rules. This Department's rulings on matters of compliance are final and nonappealable.⁴

Claudia T. Farr
Director

² The August 13, 2010 grievance lists the "issues" as: "I received a Group II written notice and the disposition was too severe for the offense." The "facts supporting" the grievance are listed as: "I had a book that I had got [sic] from the used book store that was left inside of my coat pocket inadvertently [sic]. I wasn't reading the book on post." The relief sought is: "I want this to be reduced to a counseling form, or at the very least, a Group I offense."

³ See EDR Ruling No. 2007-1519 where this Department found that a party's words contained in a letter sent contemporaneously with a Grievance Form A more accurately reflected the intent of that party than a box erroneously checked by the same party.

⁴ See Va. Code §§ 2.2-1001(5); 2.2-3003(G).