

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: November 5, 2010; Ruling #2011-2808; Agency: Virginia Information Technologies Agency; Outcome: Grievant Not In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Virginia Information Technologies Agency
Ruling Number 2011-2808
November 5, 2010

The grievant has requested a ruling in a grievance she initiated on August 31, 2010. The agency asserts that the grievant does not have access to the grievance procedure and failed to initiate her grievance within the required 30 calendar day period. For the reasons discussed below, this Department concludes that the grievance was not timely initiated and as such, is administratively closed.

FACTS

After being notified that she was going to be placed on leave without pay layoff, the grievant elected to retire effective July 1, 2010. On August 31, 2010, the grievant filed a grievance alleging that she retired July 1, 2010 “without having all the information and facts.” More specifically, the grievant claims that she recently found out that on the day before her effective date of layoff, her manager went to human resources and asked that her position be eliminated instead of the grievant. The grievant asserts that in the past, when an employee offers to resign in order to save someone else from being laid off, the employee to be laid off has been given the option of staying. The grievant claims that she was not given such an option. Upon finding out that her manager offered to voluntarily resign, the grievant filed her August 31, 2010 grievance.

The agency administratively closed the grievance because at the time she filed her grievance, the grievant was no longer employed by the Commonwealth and because the grievance was filed outside the mandated 30 calendar day period. The grievant now appeals the agency’s determination to this Department.

DISCUSSION

To have access to the grievance procedure, an employee “[m]ust have been employed by the Commonwealth at the time the grievance is initiated (unless the *action grieved* is a termination or involuntary separation, in which case the employee may initiate a grievance within 30 days of the termination or separation).”¹ Thus, once an

¹ *Grievance Procedure Manual* § 2.3 (emphasis added). In addition, the employee must satisfy the other requirements for access to the grievance procedure, such as non-probationary status. *Id.*

employee separates from state employment, the only claim for which he or she may have access to the grievance procedure is a challenge to a termination or an involuntary separation and any grievance challenging a termination or involuntary separation must be initiated within 30 calendar days of the grievant's termination or involuntary separation. 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.

This Department has long held that the 30 calendar day rule is triggered by the grievant's knowledge of the "event or action" directly affecting the grievant's own employment (e.g. her layoff), not by the grievant's discovery of evidence that the "event or action" (her layoff) may have been unfair or improper.² In this case, the event that directly and personally affected the grievant's employment occurred on July 1, 2010, the effective date of her retirement as a result of the agency's intent to abolish her position, not when she later discovered that another employee may have been treated more favorably in the same situation. Accordingly, she should have initiated her grievance within 30 days of July 1, 2010. The grievant did not initiate her grievance until August 31, 2010, which was untimely. Moreover, the grievant has failed to demonstrate just cause for her delay in initiating her grievance.³

CONCLUSION

For the reasons discussed above, this Department has determined that this grievance was not filed within the 30-calendar day period and is therefore untimely. By copy of this ruling, the grievant and the agency are advised that the agency may administratively close this grievance.⁴ This Department's rulings on matters of compliance are final and nonappealable.⁵

Claudia T. Farr
Director

² See EDR Rulings Nos. 2008-1894; 2008-1785; 2008-1737; 2005-1004; 2005-941 and 2004-881.

³ The grievant's lack of knowledge of potentially relevant information in the 30 calendar days following the effective date of her retirement is not a basis upon which to find just cause in this case. *Cf.*, EDR Ruling No. 2008-1909; EDR Ruling No. 2004-881; EDR Ruling No. 2003-087; EDR Ruling No. 2003-101 and EDR Ruling No. 2002-126.

⁴ Because this Department concludes that the grievance was initiated outside the 30 calendar day time period without just cause, a final and nonappealable determination, there is no reason for this Department to assess whether or not the grievant had access to the grievance process when she filed her grievance on August 31, 2010.

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