

Issue: Qualification and Compliance (30-Day Rule); Ruling Date: November 15, 2010; Ruling #2011-2824; Agency: University of Virginia. Outcome: Grievant Not In Compliance; **Appealed to Charlottesville Circuit Court; Final Order issued December 17, 2010; Outcome: EDR Ruling Affirmed.**



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

**QUALIFICATION AND COMPLIANCE RULING OF THE DIRECTOR**

In the matter of the University of Virginia  
Ruling No. 2011-2824  
November 15, 2010

The grievant has requested a ruling on whether his September 15, 2010 grievance with the University of Virginia (the University) qualifies for a hearing. The agency asserts that the grievance was not timely initiated and as such, denied qualification of the grievance for hearing. For the reasons set forth below, this Department determines that the grievance is untimely and accordingly, does not qualify for hearing and may be administratively closed.

FACTS

On June 30, 2010, the grievant was issued a Group I Written Notice for disruptive behavior. The grievant initiated a grievance challenging the disciplinary action on September 15, 2010. In its qualification determination, the agency head denied qualification on the basis that the grievance was not timely initiated. The grievant has now sought a ruling from this Department to determine whether he was compliant with the grievance procedure.

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.<sup>1</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. If the agency administratively closes the grievance on the basis of noncompliance with the 30 calendar day requirement, the grievant has the right to request a ruling from this Department to overturn the closure of the grievance.<sup>2</sup> However, the grievance procedure further states that “[t]o promote improved employee relations, management may allow a grievance to proceed through the resolutions steps, even if the grievance does not comply with the [30 calendar day requirement]. If the agency intends to allow the grievance to proceed through the management steps but plans to deny a hearing due to

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

<sup>2</sup> *Grievance Procedure Manual* § 2.4.

noncompliance, management should inform the employee of that intention as soon as it becomes aware of the noncompliance.”<sup>3</sup>

In this case, the agency allowed the grievance to proceed through the management resolution steps, but denied qualification on the basis that the grievance was not timely initiated. The grievant now requests a ruling on whether his grievance may proceed. Here, the event that forms the basis of the grievance is the agency’s issuance of the Written Notice. 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.<sup>4</sup> The grievant received the Group I Written Notice on June 30, 2010, and, thus, should have initiated this grievance within 30 days, i.e., no later than July 30, 2010. The grievant did not initiate the grievance until September 15, 2010, which and, thus, was untimely. The only remaining issue is whether there was just cause for the delay.

As just cause for not filing his grievance within 30 calendar days, the grievant asserts that during the week the Written Notice was issued, the agency’s human resources representative was out of the office and he was awaiting her return.<sup>5</sup> In addition, the grievant asserts that no one advised him how to challenge the Written Notice, yet admits that information regarding the grievance procedure was included on his Written Notice. Finally, the grievant claims that management told him that the Written Notice would not be changed and as such, the grievant did not know what to do. None of the reasons cited by the grievant constitute just cause for his delay in challenging the disciplinary action. This Department has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.<sup>6</sup> A grievant’s lack of knowledge about the grievance procedure and its requirements do not constitute just cause for failure to act in a timely manner.

### CONCLUSION

For the reasons set forth above, this Department concludes that the grievance was not timely initiated and there is no evidence of just cause for the delay. The parties are advised that the grievance should be marked as concluded due to noncompliance and no further action is required. This Department’s rulings on matters of compliance are final and nonappealable.<sup>7</sup>

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Claudia T. Farr  
Director

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<sup>3</sup> *Id.*

<sup>4</sup> *E.g.*, EDR Ruling No. 2005-986; EDR Ruling No. 2003-147; EDR Ruling No. 2002-118.

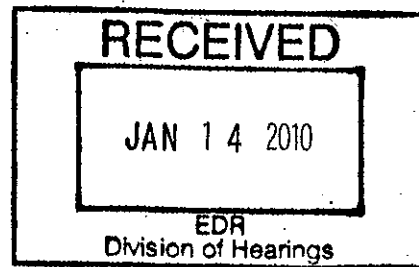
<sup>5</sup> According to the grievant, he finally had a meeting with the human resources representative on July 16, 2010, two weeks prior to the expiration of the 30 calendar day time period.

<sup>6</sup> *See, e.g.*, EDR Ruling No. 2008-1985; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

<sup>7</sup> *See* Va. Code § 2.2-1001(5); Va. Code § 2.2-3003(G).

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE**



**Grievant,**

**v.**

**Case No.: 2010-397**

**RECTOR AND VISITORS OF  
THE UNIVERSITY OF VIRGINIA,**

**Respondent.**

**ORDER**

This matter came before the Court on Grievant's appeal from Ruling No. 2011-2824 (November 15, 2010) of the Director of the Department of Employment Dispute Resolution ("EDR"), which ruling determined that his grievance was untimely initiated and, therefore, did not qualify for a hearing under the grievance procedure for state classified employees, Va. Code § 2.2-3000 *et seq.*

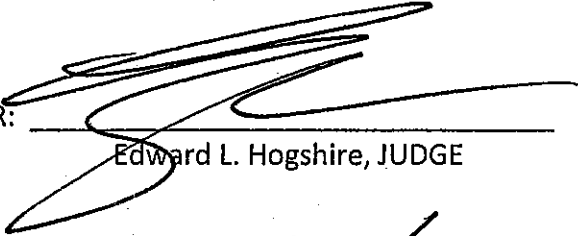
Having carefully reviewed the written record, and having heard oral argument and given due opportunity for further evidence from both the Grievant and counsel for the Respondent on December 17, 2010, this Court finds that the Department's decision must stand for the reasons given from the bench at the hearing.

WHEREFORE, this Court ORDERS that the EDR's Ruling No. 2011-2824 is *affirmed*, and the appeal is dismissed and removed from the docket of the Court. The decision of this Court is final and not appealable. Va. Code § 2.2-3004(E).

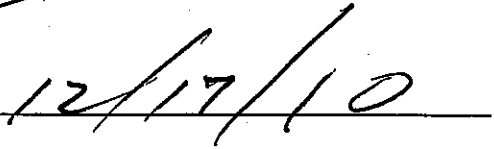
Pursuant to Rule 1:13 endorsement of the Grievant and counsel for the Respondent is dispensed with.

The Clerk is directed to send a copy of this Order to the Grievant and to counsel for Respondent.

ENTER: \_\_\_\_\_

  
Edward L. Hogshire, JUDGE

DATE: \_\_\_\_\_



A Copy Teste:-

Paul C. Haney; Clerk