

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: March 11, 2011; Ruling No. 2011-2908; Agency: Department of Corrections; Outcome: Grievant Not In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Corrections
Ruling Number 2011-2908
March 11, 2011

The grievant has requested a ruling on whether his February 3, 2011 grievance with the Department of Corrections (“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 Department determines that the grievance is untimely and may be administratively closed.

FACTS

The grievant is employed as a Correctional Officer. On June 1, 2009, the grievant received a Group III Written Notice for sleeping during work hours. As a result, the grievant was suspended without pay for forty hours. The grievant did not challenge this disciplinary action.

On January 5, 2011, the grievant learned that another officer was disciplined for the same offense, but that officer was suspended without pay for only twenty-three hours. The grievant contends that the agency unfairly and inconsistently applied the disciplinary process and he seeks repayment for the seventeen hours of lost income in 2009. The agency asserts that the grievance was untimely. The grievant now requests a ruling from this Department to determine whether he is 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.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 addition, a grievance must pertain directly and personally to the employee’s own employment.²

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

² *Grievance Procedure Manual* § 2.4.

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.³ The grievant received the Group III Written Notice on June 1, 2009 and, thus, should have initiated this grievance within 30 calendar days, i.e., no later than July 1, 2009. The grievant did not initiate the grievance until February 3, 2011, which was twenty months after the Written Notice was issued and, thus, untimely. The only remaining issue is whether there was just cause for the delay.

The grievant claims that his grievance is timely because he is challenging the agency's alleged misapplication and/or unfair application of policy and preferential treatment of an officer that was discovered sleeping on the job, which he discovered on January 5, 2011, and not his receipt of the Group III Written Notice on June 1, 2009. 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 employment (e.g. his Written Notice), not by the grievant's discovery of evidence that the "event or action" (his Written Notice) may have been unfair or improper.⁴ In this case, the event that directly and personally affected the grievant's own employment occurred on June 1, 2009, when he received the Written Notice, not when he later discovered that another employee may have been treated more favorably in the same situation. Accordingly, he should have initiated his grievance within 30 days of his receipt of the June 1, 2009 Group III Written Notice. The grievant did not initiate his grievance until February 3, 2011, which was untimely, and he has failed to demonstrate just cause for the delay in initiating his grievance.

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.⁵

Claudia T. Farr
Director

³ *E.g.*, EDR Ruling No. 2005-986; EDR Ruling No. 2003-147; EDR Ruling No. 2002-118.

⁴ *See* EDR Rulings Nos. 2008-1738; 2005-1004; 2005-941 and 2004-881.

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