

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: April 19, 2011; Ruling No. 2011-2936; Agency: Virginia Department of Health; Outcome: Grievant Not In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Health
Ruling Number 2011-2936
April 19, 2011

The grievant has requested a compliance ruling regarding her March 3, 2011 grievance with the Department of Health (“agency”). The agency asserts that the grievant did not initiate her March 3rd grievance within the 30-calendar day time period required by the grievance procedure. For the reasons set forth below, the grievance is untimely and may be administratively closed.

FACTS

The grievant was employed as a Public Health Physician Specialist. On January 13, 2011, the agency issued a due process memo to the grievant indicating that disciplinary action against her was being contemplated as a result of her alleged inappropriate and unsatisfactory patient care. On January 31, 2011, the agency issued a Group III Written Notice with termination for alleged clinical errors and violation of reasonable practice standards. The grievant received the Written Notice on February 1, 2011.

The grievant challenged the agency’s action by initiating a grievance on March 3, 2011. On March 8, 2011, the agency informed the grievant that her March 3rd grievance was administratively closed due to her failure to timely initiate the March 3rd grievance. The grievant now seeks a compliance ruling from this Department.

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. Further, the initiation date of a mailed grievance is the postmark date.²

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

² *Grievance Procedure Manual*, § 2.4.

In this case, the event that forms the basis of the grievance is the grievant's Group III Written Notice with termination, which the grievant received on February 1, 2011. Accordingly, the grievance should have been initiated within 30 calendar days of February 1, 2011. Because the grievance was not mailed until March 4, 2011, 31 days after the grievant received the Group III, the grievance is untimely. Thus, the only remaining issue is whether there was just cause for the delay.

The grievant offers several reasons why she delayed in initiating her grievance. First, she contends that she was unable to timely complete her grievance paperwork because she suffers from a medical condition that allegedly made it difficult for her "to have the energy or the will to work on the grievance." 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.³ 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.⁴ This evidence is best obtained through a health care provider's written determination.

The grievant has provided this Department with a note from her physician indicating that her medical condition has resulted in a decrease in her energy level, decisiveness, and organization and would "make it difficult for [the grievant] to concentrate on difficult tasks for very long." For the purposes of 30-day compliance rulings, this Department generally takes at face value the representations by health care providers as to an employee's ability (or inability) to act upon her legal rights.⁵ In this case, there is little doubt that the grievant suffers from a medical condition. However, based upon the documentation provided to this Department, we cannot conclude that her medical condition was so debilitating that she was incapable of protecting her grievance rights.

The grievant also asserts that her responsibilities as her mother's primary care giver for the latter half of February, and her inability to print and assemble her grievance paperwork on March 3, 2011, due to computer problems also prevented her from timely submitting her grievance. We note, however, that the grievant freely and candidly admitted on more than one occasion that she has a "general tendency to be a procrastinator." This Department has long applied the 30-day rule in a strict manner, and find that neither of these reasons constitutes just cause for her delay in challenging the Group III notice and termination.

³ See EDR Ruling No. 2006-1201; EDR Ruling No. 2003-154 and 2003-155.

⁴ *Id.*; see also EDR Ruling No. 2005-1040.

⁵ *Id.*; see also EDR Ruling 2001-073.

CONCLUSION

For the reasons set forth above, this Department concludes that the grievant has failed to demonstrate just cause for her 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.⁶

Claudia T. Farr
Director

⁶ See Va. Code § 2.2-1001(5); 2.2-3003(G).