

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: June 7, 2011; Ruling No. 2011-2999; Agency: Virginia Commonwealth University; Outcome: Grievant Not in Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Virginia Commonwealth University
Ruling Number 2011-2999
June 7, 2011

The grievant has requested a compliance ruling regarding her May 16, 2011 grievance with Virginia Commonwealth University (the “university”). The university asserts that the grievant did not initiate her May 16th 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 an Audit Clerk. On April 14, 2011, the university terminated the grievant for unsatisfactory job performance.

The grievant challenged the university’s action by signing a grievance on May 16, 2011. The agency asserts that the grievance was enclosed in an envelope that was postmarked May 18, 2011. On May 20, 2011, the university informed the grievant that her May 16th grievance was administratively closed due to her failure to timely initiate the 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

In this case, the event that forms the basis of the grievance is the grievant’s termination, which was effective April 14, 2011. Accordingly, the grievance should have been initiated within 30 calendar days of April 14, 2011. Because the grievance was not

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

² *Grievance Procedure Manual*, § 2.4.

mailed until May 18, 2011, 34 days after the grievant was terminated, the grievance is untimely. Thus, the only remaining issue is whether there was just cause for the delay.

To support her claim of just cause, the grievant contends that the 30th calendar day fell on a weekend which is not considered a business day for the university. Indeed, the 30th day of this time period fell on a Saturday. However, the fact that the 30th day falls on a weekend does not extend the deadline for initiating a grievance.³ This Department has consistently strictly applied the 30-day rule. An erroneous belief that the 30-day period does not include weekends does not constitute just cause. This Department has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.⁴ A grievant's lack of knowledge about the grievance procedure and its requirements does not constitute just cause for failure to act in a timely manner. This Department, therefore, concludes that the grievant has failed to demonstrate just cause for her delay.

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.⁵

Claudia T. Farr
Director

³ See EDR Ruling No. 2008-1881; EDR Ruling No. 2006-1201; EDR Ruling No. 2003-118.

⁴ See, e.g., EDR Ruling No. 2008-1985; EDR Ruling No. 2006-1349, 2006-1350; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

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