

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: September 20, 2011; Ruling No. 2012-3081; Agency: Department of Corrections; Outcome: Grievant in Compliance.



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of the Department of Corrections  
Ruling Number 2012-3081  
September 20, 2011

The grievant has requested a ruling on whether her August 11, 2011 grievance with the Department of Corrections (“DOC” or the “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 grievance is timely.

FACTS

The grievant is employed as a Probation/Parole Officer with the agency. On July 12, 2011, the grievant received a letter dated July 11, 2011 stating that she had not been selected for a position for which she had recently applied. The grievant completed a Grievance Form A in which she challenged the selection and presented her grievance to her immediate supervisor on August 11, 2011 with the instruction that it be passed on to the Chief Probation and Parole Officer (“Chief”). The agency has declined to process the grievance on the basis that it was purportedly untimely.

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.

Here, it is apparent that the event that forms the basis of the August 11, 2011 grievance--the agency’s decision not to select her--occurred when the grievant received a letter so informing her on July 12, 2011. In counting the 30 calendar days, the day of the event (or receipt of notice of the event’s occurrence) is not counted.<sup>2</sup> The 30 calendar day count commences the following day. Thus, the first of the 30 days was July 13,

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

<sup>2</sup> *Grievance Procedure Manual* § 8.3.

2011. Thirty calendar days from the July 13, 2011 was August 11, 2011, the day that the grievant presented her grievance to her immediate supervisor. Therefore, the grievance is timely.

It is not entirely clear why the agency viewed the grievance as untimely. The letter from the agency declining to address the grievance describes the sequence of events surrounding the initiation of the August 11<sup>th</sup> grievance as follows: (1) August 11, 2011-- the grievant presented her grievance to her immediate supervisor, requesting that it be forwarded to the Chief; (2) August 12, 2011-- the grievance was presented to the Chief who reviewed it and determined that it needed to be addressed by the grievant's immediate supervisor, and it was returned to the immediate supervisor later that same day.

To the extent that the agency has declined to address the grievance because the grievant misdirected it to the Chief, any such error was harmless. First, the grievant timely provided her grievance to the proper step respondent. Moreover, assuming without deciding that the grievant asked her supervisor to pass her grievance on to the Chief, any such instruction would not change the outcome here because this Department has long held that a grievance timely initiated but initiated with the wrong respondent will nevertheless be deemed timely.<sup>3</sup> Here, the grievant actually gave her grievance to the correct respondent (her supervisor) on the 30<sup>th</sup> day apparently with an instruction that it be forward to the Chief (the wrong respondent). Based on prior ruling precedent, this must deem the grievance timely as it was placed in the correct hands on the 30<sup>th</sup> day. The fact that it was returned to the immediate supervisor for a response on the 31<sup>st</sup> day is simply immaterial.

We note that the grievance references to two other positions for which the grievant unsuccessfully applied at earlier dates. The grievant was informed that she was not the successful applicant for these positions on February 4, 2011, and May 13, 2011, well beyond 30 calendar days prior to the initiation of the August 11, 2011 grievance. Accordingly, any claims based on the selection process relating to these two positions are untimely and relief is not available for such claims. Thus, any claims based on recruitment for these two positions need not be further addressed by the agency. The grievant, however, is free to reference the circumstances surrounding these selections as background evidence if she chooses, as is the agency.

### CONCLUSION

For the reasons set forth above, this Department concludes that the grievance was timely initiated as to the Senior Probation and Parole Position, referenced in the July 11<sup>th</sup> letter and this claim must be allowed to proceed. This ruling in no way reflects the merits of the grievance, only that it is timely filed. The grievance package must be returned to the first step respondent who must provide a substantive response within 5-workdays of

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<sup>3</sup> EDR Ruling Nos. 2011-2692; 2007-1686; 2006-1114; 2004-645; 2001-230.

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receipt of this ruling in accordance the grievance procedure. This Department's rulings on matters of compliance are final and nonappealable.<sup>4</sup>

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Claudia T. Farr  
Director

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<sup>4</sup> See Va. Code §§ 2.2-1001(5); 2.2-3003(G).