

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: October 19, 2011; Ruling No. 2012-3132; 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 the Department of Corrections  
Ruling Number 2012-3132  
October 18, 2011

The grievant has requested a ruling on whether her August 30, 2011 grievance with the Department of Corrections (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 initiated timely. For the reasons set forth below, this Department determines that the grievance is untimely and may be administratively closed.

FACTS

In her grievance, the grievant has challenged her separation from employment and seeks reinstatement. Due to concerns the grievant had with the workplace and staffing levels, the grievant submitted her resignation on October 21, 2010, with an effective date of November 8, 2010. On the way to work on October 25, 2010, the grievant was in a car accident. She states that she was in a coma for five days and in the hospital for five weeks.

Although the grievant did not return to work, the agency extended the effectiveness of her resignation until December 31, 2010. The grievant submitted a letter to the agency, dated December 1, 2010, seeking to rescind her resignation. The agency declined to allow her to rescind the resignation. The grievant was separated from employment effectively December 31, 2010. The grievant submitted her grievance seeking reinstatement on or about August 30, 2011.

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.

In this case, the event that forms the basis of this grievance is the grievant's separation on December 31, 2010. Therefore, she should have initiated her grievance within 30 days, i.e., no

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

later than January 30, 2011. Because the grievant did not initiate her grievance until August 30, 2011, the challenge to her separation is untimely. The only remaining issue is whether there was just cause for the delay.

The grievant cites to her accident as an explanation for this late filing. This Department has long held, however, 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.<sup>2</sup> 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.<sup>3</sup>

The grievant’s condition shortly following her accident would likely constitute just cause for a delayed filing. However, it does not support the grievant’s untimeliness of eight months past her separation. While this Department is sympathetic to the grievant’s experience, the grievant has submitted no evidence to support a finding that the grievant was incapacitated to the point that she was unable to protect her grievance rights to such an extent that the 30-day period should be extended eight months. Indeed, around the time the grievant left the hospital, she was able to submit a letter to the agency requesting to rescind her resignation. Because the grievant’s symptoms would presumably have been the most serious during that period and she was able to complete such a task, this Department is unable to find that any impairment she may have experienced was so debilitating that she could not protect her grievance rights after her separation on December 31, 2010. There is no evidence that the grievant made any attempt to file a grievance or request an extension until well after the 30-day period had lapsed.

### 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>4</sup>

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Claudia T. Farr  
Director

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<sup>2</sup> See EDR Ruling No. 2006-1201; EDR Ruling Nos. 2003-154, 155.

<sup>3</sup> *Id.*; see also EDR Ruling No. 2005-1040.

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