

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: November 8, 2011; Ruling No. 2012-3141; Agency: Department of Criminal Justice Services; Outcome: Grievant Not in Compliance.



COMMONWEALTH OF VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF THE DIRECTOR

In the matter of Department of Criminal Justice Services
EDR Ruling No. 2012-3141
November 8, 2011

The grievant has requested a ruling on whether his grievance, dated October 1, 2011, with the Department of Criminal Justice Services (the agency) is in compliance with the grievance procedure. The agency asserts that the grievance was not properly initiated within the 30 calendar-day timeframe. For the reasons set forth below, this Department determines that the grievance was untimely and is administratively closed.

FACTS

On September 1, 2011, the agency issued a Written Notice to the grievant. According to the grievant, he went to the office on October 1, 2011, a weekend, to complete a Grievance Form A and submit it to the agency. Finding that he was unable to send the document by e-mail, he elected to scan the grievance electronically and place it in his supervisor's personal folder on a network drive. He scanned and saved this electronic file into his supervisor's folder at 12:00:02 a.m. on October 2, 2011. The grievant brought the file to his supervisor's attention the following Monday, October 3, 2011. The agency asserts that the grievance was not properly or timely initiated by placement on the network drive and administratively closed the grievance. The grievant has now sought a ruling from this Department to determine whether he was 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 this case, 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

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

action, the 30 calendar-day timeframe begins on the date that management presents or delivers the Written Notice to the employee.² Thus, the grievant should have initiated this grievance within 30 days, i.e., no later than October 1, 2011. However, the grievant placed a scanned copy of the Grievance Form A in his supervisor's personal folder on an agency network drive on October 2, 2011, a mere two seconds after the 30 calendar-day period expired at midnight October 1, 2011. The grievant did not initiate the grievance in a timely manner.³ The only remaining issue is whether there was just cause for the delay.

The documentation submitted with the grievant's ruling request indicates that the grievant was out of town when he realized that October 1, 2011 was the last day to initiate his grievance. Although he made an effort to complete the grievance and submit it on time, it appears that the grievant waited until the last possible moment and was ultimately unsuccessful. As such, this Department cannot conclude that just cause existed for the grievant's failure to file the grievance within the requisite 30-day period. The grievant has alleged no grounds beyond his control that would justify the untimely initiation of this grievance. This Department has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.⁴ Though the grievant's extremely small delay is unfortunate, it was past the October 1 deadline. Based upon its past precedent, this Department must conclude that the grievance is untimely without just cause for his delay.

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

² *E.g.*, EDR Ruling No. 2005-986; EDR Ruling No. 2003-147; EDR Ruling No. 2002-118.

³ This ruling does not address whether the grievant's placement of a scanned copy of the Grievance Form A in his supervisor's folder on a network drive was an appropriate means by which an employee may initiate a grievance.

⁴ *See, e.g.*, EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

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