

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: February 22, 2012; Ruling No. 2012-3218; Agency: Department of Behavioral Health and Developmental Services; Outcome: Grievant Not in Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF THE DIRECTOR

In the matter of the Department of Behavioral Health and Developmental Services
EDR Ruling No. 2012-3218
February 22, 2012

The grievant has requested a ruling on whether her December 12, 2011 grievance with the Department of Behavioral Health and Developmental Services (the agency) was timely initiated. For the reasons set forth below, this Department determines that the grievance is untimely and may be administratively closed.

FACTS

On November 4, 2011, the grievant was issued a Group II Written Notice. The grievant initiated a grievance challenging the disciplinary action on December 12, 2012. On December 19, 2011 the agency informed the grievant that it would not process the grievance because it was untimely. The grievant now seeks a ruling from this Department (EDR) to determine whether she was compliant with the grievance procedure.

DISCUSSION

The grievance procedure provides that an employee must initiate a 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 action, the 30 calendar-day timeframe begins on the date that management presents or delivers the Written Notice to the employee.² The grievant received the Written Notice on November 4, 2011, and, thus, should have initiated this grievance within 30 days, i.e., no later than December 4, 2011. The grievant did not initiate the grievance until December 12, 2011, thus it was untimely. The only remaining issue is whether there was just cause for the delay.

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

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

As just cause for not filing her grievance within 30 calendar days, the grievant asserts that she missed the filing deadline as a result of her demanding schedule. That reason cannot be viewed as just cause for the delay. It is unfortunate that the grievant missed her opportunity to challenge the Written Notice but the Written Notice form itself unequivocally states that any grievance must be filed within 30-days.

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.³

Claudia T. Farr
Director

³ See Va. Code § 2.2-1001(5); Va. Code § 2.2-3003(G).