

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: January 19, 2012; Ruling No. 2012-3219; 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 2012-3219
January 19, 2012

The grievant has requested a compliance ruling related to his December 16, 2011 grievance with the Department of Corrections (the agency). The agency asserts that the grievant failed to initiate his grievance in a timely manner. For the reasons set forth below, this grievance was not initiated timely and is administratively closed.

FACTS

In his December 16, 2011 grievance, the grievant seeks “[b]ack pay and benefits for the long periods of unemployment since January 20, 1997.” The grievant’s arguments arise from the handling of his employment by the agency in the late-1990s. Upon returning to the agency in 2003, the grievant states he was told he would receive back pay and benefits as if he had never left the agency. This alleged promise was not fulfilled. However, the grievant, a member of the U.S. Army Reserves, was called to active duty in August 2003, returning to the agency in February 2004. He was remobilized again in April 2004 until March 2009, and again from April 2009 to August 2010, whereupon he returned to work at the agency.

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 action forming the basis of the grievance is less than clear. The grievant’s arguments stem from his work history and eventual termination in the late 1990s. However, his grievance may also concern the agency’s alleged promise to address his back pay and benefits issues when he returned to the agency in 2003. Whatever action might be considered the triggering event, however, the grievant has challenged no management action that

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

occurred within the 30 calendar days preceding the initiation of his grievance on December 16, 2011. Because the grievance is therefore untimely, the only remaining issue is whether there was just cause for the delay.

In addressing any delay in the filing of his grievance, the grievant cites to the Servicemembers Civil Relief Act (“Act”).² Among the provisions of this Act is language that tolls the statute of limitations for the period of the servicemember’s service³ on active duty.⁴ We will assume for purposes of this ruling only that the grievant is covered by the provisions of this Act. However, the triggering date for this grievance occurred no later than his return to the agency in 2003. Even overlooking any time periods when the grievant was working at the agency in between his periods of active military duty, the maximum amount of tolling the Act would appear to provide in this case ended in August 2010 when the grievant’s active duty ceased. Consequently, even granting him that benefit, the 30 calendar-day period would have lapsed, at the latest, in September 2010. Having presented no other grounds for the late filing of this grievance, we find no just cause for the grievant’s delay.

CONCLUSION

For the reasons set forth above, this Department determines that the grievance is untimely. 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 50 U.S.C. app. § 501 et seq.

³ 50 U.S.C. app. § 526 (“The period of a servicemember’s military service may not be included in computing any period limited by law, regulation, or order for the bringing of any action or proceeding in a court, or in any board, bureau, commission, department, or other agency of a State (or political subdivision of a State) or the United States by or against the servicemember or the servicemember’s heirs, executors, administrators, or assigns.”).

⁴ Military service is defined as active duty under the Act. 50 U.S.C. app. § 511.

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