

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: February 8, 2012; Ruling No. 2012-3228; Agency: Department of Behavioral Health and Developmental Services; Outcome: Grievant 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  
Ruling No. 2012-3228  
February 8, 2012

The grievant has requested a ruling on whether her November 13, 2011 expedited grievance with the Department of Behavioral Health and Developmental Services (the agency) was timely initiated. The agency asserts that the grievance was not timely filed, thus has refused to process it. For the reasons set forth below, this Department determines that the grievance was untimely but just cause exists to allow it to proceed.

FACTS

The grievant was issued a Group III Written Notice with termination that identified an effective date of October 13, 2011 and a date of issuance of October 14, 2011. The agency asserts that the October 14<sup>th</sup> date was “truly a typographical error” and the Written Notice was actually issued on October 13<sup>th</sup>. The agency has provided this Department with a copy of the Written Notice that appears to be signed and dated (October 13, 2011) by the grievant.

The grievant initiated an expedited grievance challenging the disciplinary action. The agency responded by asserting that the grievance was not timely initiated, pointing to the October 13, 2011 date of termination. The grievant now seeks a ruling from this Department to determine whether she 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.<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. 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.<sup>2</sup> Furthermore, this

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

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

Department has consistently held that a grievance initiated in a timely manner but with the wrong party will not bar a grievance for noncompliance.<sup>3</sup>

It appears that the Written Notice was presented to the grievant on October 13<sup>th</sup>. If so, the grievance would be untimely by one day. However, due to the particular and unusual facts of this case, just cause exists to allow this grievance to proceed. First, the agency cannot say whether it provided the grievant with a copy of the signed grievance and the grievant asserts that, to the best of her knowledge, she was not. She states that she gave her representative, her brother, all the paperwork related to her termination. The grievant's brother has explained that she was under the care of a psychiatrist during the period leading up to and surrounding her dismissal. He further asserts that he has been assisting his sister with the processing of her grievance. The copy of the Written Notice that was in the grievant's possession, the one she provided her brother, was an unsigned version. The only indication of the date that the Written Notice was issued was the erroneous October 14, 2011 date. Moreover, it appears as though the grievant's brother reasonably relied upon this erroneous date when helping to prepare and present the grievance. Accordingly, this Department cannot allow the error of the agency to deny the grievant the ability to utilize the grievance process.

The grievant's original grievance filing was improper in that it was sent to this Department instead of the agency. As noted above, however, this Department has long held that a grievance initiated in a timely manner but with the wrong party will not be barred for noncompliance. As explained above, there was just cause for the one day delay in the initiation of the grievance. Accordingly, the grievance will essentially be viewed as timely and must be allowed to proceed.

### CONCLUSION

For the reasons set forth above, this Department concludes that the grievance was timely initiated. Accordingly within 5 workdays of receipt of this ruling, the agency must arrange and conduct the second step meeting and, 5 workdays after the meeting, provide the grievant with a written response addressing the issues raised and the relief requested in her grievance. 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>3</sup> EDR Ruling Nos. 2010-2678; 2007-1686; 2006-1256, 2006-1257; 2006-1114; 2004-645; 2001-230.

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