

Issue: Reconsidered Compliance – Grievance Procedure (30-Day Rule); Ruling Date: February 14, 2012; Ruling No. 2012-3237; Agency: Virginia Department of Health; Outcome: No Ruling.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

RECONSIDERED COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Health
Ruling Number 2012-3237
February 14, 2012

The grievant has requested that this Department reconsider its compliance determination in Ruling No. 2012-3184, 2012-3189 (the “initial compliance ruling”), which held that the Department of Health (the “agency”) could administratively close the grievant’s October 13, 2011 and October 31, 2011 grievances.¹ For the reasons discussed below, we find no error with the January 4, 2012 initial compliance ruling.

FACTS

At issue in the January 4, 2012 initial compliance ruling was whether the grievant had timely initiated her October 13, 2011 and October 31, 2011 grievances, whether the grievant had just cause for her delay in initiating the October 13, 2011 grievance, and whether the October 31, 2011 grievance was duplicative of the October 13, 2011 grievance.² In that ruling, this Department concluded the grievant failed to demonstrate just cause for her delay in initiation of her October 13th grievance.³ Furthermore, EDR determined that the October 31st grievance, triggered by the additional alleged misinformation the grievant received from the Department of Health on October 24, 2011 about the agency’s reorganization, nevertheless challenged the same management action and history of events as the October 13th grievance and therefore was untimely and duplicative.⁴

In her request for reconsideration, the grievant states she delayed filing her October 13th grievance because “she relied on purposefully incorrect information provided by her department, which led her to mistakenly believe that she did not have a grievable issue regarding her eligibility for a lay-off option.” She asserts that the incorrect information provided by the Department of Health “is precisely the sort of “wrongful conduct on the part of the defendant” that prevented her “asserting [her] claim.”” As such, the grievant asserts that this Department

¹ EDR Ruling No. 2012-3184, 2012-3189.

² *Id.*

³ *Id.*

⁴ *Id.*

improperly concluded in its initial compliance ruling that the grievant did not have just cause for the untimely delay in the initiation of her October 13th grievance.

DISCUSSION

In the initial compliance ruling, EDR determined that the event that formed the basis of the October 13th and October 31st grievances was the effective date of the agency reorganization, which was August 25, 2011.⁵ Accordingly, EDR held that the grievances should have been initiated within 30 calendar days of August 25, 2011, when the grievant was placed in a comparable position without allegedly being offered the same layoff options as others.⁶ This Department has long held that the 30 calendar day rule is triggered by the grievant's knowledge of the "event or action" directly affecting the grievant's own employment (e.g. her placement on August 25, 2011), not by the grievant's discovery of evidence that the "event or action" may have been unfair or improper.⁷ While it is accurate that the grievant received contradictory information from the Department of Human Resources Management (DHRM) and the Department of Health in September and October, the *event* forming the basis of both grievances is the grievant's job placement on August 25, 2011, not the contradictory reasons or information provided by the agency to the grievant after that event occurred.

To the extent the grievant argues that just cause exists because she relied upon the incorrect information provided by her department, which mistakenly led her to believe she did not have a grievable issue, this Department has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.⁸ A grievant's lack of knowledge about the grievance procedure and its requirements do not constitute just cause for failure to act in a timely manner. Section 2.2 of the *Grievance Procedure Manual* explains that "[e]ven when [informal] discussions are ongoing, however, the written grievance must be initiated within 30 calendar days of the date that the employee knew, or should have known, of the event that formed the basis of the dispute." Moreover, in this case, the grievant was actually instructed by DHRM on September 12, 2011, to contact her agency human resource office if she wished to file a grievance regarding the job placement or her concerns about the contradictory information she was receiving from the agency.⁹ The instruction from DHRM was correct and unambiguous. Accordingly, under the facts of this case, this Department cannot conclude the agency prevented the grievant from timely asserting her claim.

Therefore, this Department concludes that there are no grounds for which reconsideration of EDR's compliance ruling is appropriate. The issues raised by the grievant in her reconsideration request have already been considered and addressed in the previous compliance ruling. The grievant has submitted nothing further that would alter the determinations in that ruling.

⁵ *Id.*

⁶ *Id.*

⁷ See EDR Rulings Nos. 2011-2808; 2008-1894; 2008-1785; 2008-1737; 2005-1004; 2005-941 and 2004-881.

⁸ See, e.g., EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

⁹ EDR Ruling No. 2012-3184, 2012-3189.

The request for reconsideration is denied. This Department's rulings on matters of compliance are final and nonappealable.¹⁰

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Director

¹⁰ See Va. Code § 2.2-1001(5), 2.2-3003(G).