

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date:  
February 8, 2012; Ruling No. 2012-3238; Agency: Department of Behavioral  
Health and Developmental Services; Outcome: Grievant Not in Compliance.



*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*

**COMPLIANCE RULING OF DIRECTOR**

In the matter of the Department of Behavioral Health and Developmental Services  
Ruling Number 2012-3238  
February 8, 2012

The grievant has requested a compliance ruling regarding her January 17, 2012 grievance with the Department of Behavioral Health and Developmental Services (the “agency”). The agency asserts that the grievant did not initiate her January 17<sup>th</sup> grievance within the 30-calendar day time period required by the grievance procedure and alleges the grievance does not pertain directly to the grievant’s employment. For the reasons set forth below, the grievance may be administratively closed.

FACTS

The grievant is employed as a Direct Support Associate within Unit 4 at the agency. The grievant had been out of work from September 29, 2011; returned and was present at work from October 18, 2011 until November 11, 2011; and has been out of work since November 12, 2011.

The grievant asserts that she has requested to laterally transfer to Unit 2 on three separate occasions since November 2010, but the agency has denied all three requests. While the grievant was out of work, the agency laterally transferred a male staff member to Unit 2 on September 29, 2011. The grievant alleges that she first learned about the male staff member’s transfer on December 20, 2011. The grievant challenged the agency’s action by initiating a grievance on January 17, 2012, alleging that her supervisor discriminated against her when she granted a Unit 2 lateral transfer to a male employee, but denied the grievant’s prior requests.

On January 19, 2012, the agency informed the grievant that it planned to administratively close the January 17<sup>th</sup> grievance due to her failure to timely initiate the grievance and due to the fact it did not pertain directly and personally to the employee’s own employment. Moreover, the agency asserts that it is inconceivable that the grievant first learned of the transfer on December 20, 2011, and more likely that she learned about this before November 11, 2011, because the grievant was present at work from October 18, 2011 through November 11, 2011, but has been out of work since November 12, 2011. Therefore, the agency believes the grievant contrived the December 20, 2011 date

in order to meet the 30-calendar day grievance initiation procedure rule. The grievant now seeks a compliance ruling from this Department.

### DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date 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. Also, a grievance must pertain directly and personally to the employee's own employment.<sup>2</sup>

Reading these procedural requirements together, the timeliness issue to be decided here is whether the grievant's own employment was directly and personally affected by an "event or action" during the 30-calendar days immediately preceding the initiation of her grievance. In this case, it was not. The grievant's own employment was directly and personally affected when the agency denied the grievant a lateral transfer to Unit 2 on the three separate occasions prior to November 12, 2011, but her January 17, 2012 grievance was not filed within 30 calendar days of these three events.

Moreover, the grievant has not demonstrated just cause for her failure to initiate her grievance within the 30-calendar day period. The grievant contends that she first learned about the male staff member's transfer during a phone conversation with another staff member on December 20, 2011. However, this Department has held that the 30 calendar day rule is triggered by the grievant's knowledge of the "event or action" directly affecting the grievant's employment, not by the grievant's knowledge of the alleged impropriety of that "event or action."<sup>3</sup> In this case, the events directly and personally affecting the grievant's employment occurred when the agency denied the grievant's three requests to transfer to Unit 2, not when the grievant discovered that a male employee was transferred to Unit 2 prior to November 12, 2011. This Department, therefore, concludes that the grievant initiated her grievance beyond the 30 calendar day period without just cause.

### 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

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

<sup>2</sup> *Grievance Procedure Manual* § 2.4.

<sup>3</sup> See, e.g., EDR Ruling No. 2003-422; compare *Hamilton v. 1<sup>st</sup> Source Bank*, 928 F. 2d 86, 88-89 (4<sup>th</sup> Cir. 1990) (court noting that the statutory trigger date in Title VII discriminatory discharge cases is the date of the employee's notice of the employer's "act" (the discharge), not the employee's notice of the employer's discriminatory motivation behind the act). See also EDR Ruling No. 2007-1665.

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.<sup>4</sup>

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Claudia T. Farr  
Director

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