

Issue: Compliance – Grievance Procedure (30-Day rule); Ruling Date: May 18, 2012;
Ruling No. 2012-3341; Agency: Department of Juvenile Justice; Outcome: Grievant
Not in Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of Juvenile Justice
Ruling Number 2012-3341
May 18, 2012

The grievant has requested a ruling related to her March 22, 2012 grievance with the Department of Juvenile Justice (the agency). Though the agency head also denied qualification of the grievance for hearing, the agency closed the grievance for non-compliance. For the reasons set forth below, this grievance was not initiated timely and will remain administratively closed.

FACTS

The grievant began work for the agency on or about September 25, 2006, at which time she apparently began serving a 12-month probationary period.¹ The grievant states at that time she signed her offer letter she accepted employment at a particular salary. However, the agency maintains that the grievant began employment under a different salary, one lower and equal to the grievant's salary at her prior employing agency. Curiously, the offer letter that appears in the grievant's personnel file, which indicates this lower salary, is unsigned. In her March 22, 2012 grievance, the grievant now challenges the fact that she, in her opinion, was not paid the proper starting salary. Further, the grievant maintains she did not receive an appropriate pay differential because of the facility at which she works. The agency maintains that the grievant's salary was based on her prior agency salary, which already included an equal pay differential for similar reasons. The grievant also asserts that she did not receive the full 10% pay increase to which she was apparently entitled upon completing one year with this 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

¹ Based on documentation submitted, before joining the agency, the grievant was employed by another state agency. It is not clear whether the grievant had completed her probationary period at that other agency. Further, it is not clear whether the grievant would have been required to complete another probationary period with her current agency if she had. *See* DHRM Policy 1.45, *Probationary Period*. Whether the grievant was in a probationary status when she began employment with the agency does not affect the outcome of this ruling.

that is the basis of the grievance.² 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 primary action forming the basis of the grievance is the grievant's initial hire date whereupon her starting salary began in September 2006. With regard to the 10% increase issue following a year of employment with the agency, that action occurred in September 2007. There is no question that the grievant knew or should have been able to easily know what her salary was when she was hired and began receiving a pay check, particularly given that the agency contends her starting pay was identical to her former pay with another agency. The same holds true for when the grievant received whatever increase she was provided after working for the agency for a year. She had 30 calendar days from those times in September 2006 and 2007 to file a grievance to challenge those pay actions. The grievant initiated this grievance on March 22, 2012. Because the grievance was initiated more than 30 days after the salary actions (and the grievant's presumed knowledge of those actions), this grievance is untimely.³ The only remaining issue is whether there was just cause for the delay.

The grievant states that she simply did not notice any problems with her pay when she was hired or when the increase came one year later. While we can understand the grievant's situation, this argument does not demonstrate just cause for the delay. The grievant was aware or should have been aware upon receiving an initial pay check of any problems with her salary. Nothing prevented the grievant from inquiring at that time or certainly before the deadline for filing a grievance, the grievant's probationary status notwithstanding. Unfortunately, the grievant waited for many years to file this grievance. The grievant has alleged no grounds beyond her control that would justify the untimely initiation of this grievance. This Department, therefore, concludes that the grievant has failed to demonstrate just cause for her 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.⁴

Furthermore, while this Department is unable to address this grievance any further through the grievance procedure or other authority granted by statute, the facts presented by the grievant do raise concerns. The grievant appears to have a vivid memory of negotiating a salary and signing an offer letter at a particular (higher) salary than the one she eventually received. The fact that the offer letter on file in the grievant's personnel file with a lower salary is unsigned

² Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4.

³ Because the grievance was submitted more than 30 days after the grievant was or should have been clearly aware of these salary actions, the grievance cannot be deemed timely under the paycheck accrual rule. See EDR Ruling No. 2010-2651.

⁴ See Va. Code §§ 2.2-1001(5), 2.2-3003(G).

could raise reasonable questions of whether the grievant did indeed receive an inappropriately reduced initial salary. Why, if the grievant purportedly accepted this lower salary, is this offer letter not signed? One explanation apparently offered to the grievant is that she was a lateral transfer and her salary with the agency simply reflected her salary with the previous agency. However, that explanation would seem to be inconsistent with the grievant's description of having filled out an application, interviewed, and negotiated a salary through a competitive selection. While this Department has reviewed no conclusive evidence to suggest that the agency has done anything improper, it is this Department's hope and recommendation that the agency will seek to determine whether there is any error in the grievant's pay and correct such an error if it exists.

Claudia T. Farr
Director