

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: July 18, 2012;
Ruling No. 2012-3370; Agency: Department of Corrections; Outcome: Grievant Not
in Compliance.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Employment Dispute Resolution

COMPLIANCE RULING

In the matter of the Department of Corrections
Ruling Number 2012-3370
July 18, 2012

The grievant has requested a ruling from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management on whether his May 17, 2012 grievance with the Department of Corrections (the agency) is in compliance with the grievance procedure. The agency asserts that the grievance does not comply with the grievance procedure because it was not initiated timely. For the reasons set forth below, EDR determines that the grievance is untimely and may be administratively closed.

FACTS

In his grievance, the grievant has challenged his separation from employment and seeks reinstatement. The grievant did not report to work beginning February 28, 2012. The grievant apparently submitted a doctor's note purportedly taking him out of work for the period February 29, 2012 through March 28, 2012. The agency's attempts to contact the grievant during this period were unsuccessful. Consequently, the agency sent a letter to the grievant, dated March 20, 2012, indicating that his failure to report to work was being considered a resignation. The grievant did not receive this letter until April 10, 2012. The agency also sent another letter on April 20, 2012, confirming the grievant's resignation and notifying him of certain rights and responsibilities as a consequence of his separation. The grievant submitted a grievance to challenge the agency's actions on May 17, 2012, which the agency has determined to be untimely. The grievant now appeals that determination.

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.

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

In this case, the event that forms the basis of this grievance is the grievant's purported separation from employment on March 20, 2012, which the grievant did not discover until April 10, 2012. Therefore, he should have initiated his grievance within 30 days, i.e., no later than May 10, 2012. Because the grievant did not initiate his grievance until May 17, 2012, the challenge to his separation is untimely. The only remaining issue is whether there was just cause for the delay.

The only issue raised by the grievant as an explanation for the late filing was that the agency's April 20, 2012 letter somehow extended the filing period as a continuing communication. We are not so persuaded. The event that the grievance is challenging is the grievant's separation, which he discovered on April 10, 2012. There is no question the grievant was or should have been aware of his loss of a job by that point. Consequently, the 30-day clock began on April 10, 2012. The subsequent letter on April 20, 2012 provides no further justification that would give the grievant additional time to file a grievance.

CONCLUSION

While there are reasonable questions to raise about the grievant's separation and whether it was done appropriately and/or lawfully, those are not questions at issue in this ruling. This ruling only addresses whether the grievance was initiated within the required 30 calendar-day time period. For the reasons set forth above, EDR concludes that the grievance was not timely initiated and there is no evidence of just cause for the delay. The parties are advised that the grievance should be marked as concluded due to noncompliance and no further action is required. EDR's rulings on matters of compliance are final and nonappealable.²



Christopher M. Grab
Senior Consultant
Office of Employment Dispute Resolution

² See Va. Code §§ 2.2-1202.1(5); 2.2-3003(G).