

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: August 6, 2012; Ruling No. 2013-3397; Agency: Virginia Department of Transportation; Outcome: Grievant in Compliance.



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

COMPLIANCE RULING

In the matter of the Virginia Department of Transportation
Ruling Number 2013-3397
August 6, 2012

The grievant has requested a ruling on whether her July 3, 2012 grievance with the Virginia Department of Transportation (the “agency”) is in compliance with the grievance procedure. The agency asserts that the grievant’s July 3, 2012 grievance does not comply with the grievance procedure because the grievance is untimely. For the reasons set forth below, the grievance is timely.

FACTS

The grievant is currently employed as a Transportation Operator II at the agency’s M facility, but had been previously employed at the agency’s E facility in a higher level position prior to her transfer to the agency’s M facility. On December 5, 2011, while the grievant was still employed at the E facility, the agency’s E facility management held a mandatory staff meeting, informing its staff that although the E facility was undergoing a transfer of operations, it would not be transferring and/or placing staff in other agency facilities. The grievant alleges that the E facility management specifically stated that in order to transfer to another agency facility, all employees were required to go through the competitive recruitment process. As such, the grievant applied for and was selected for the Transportation Operator II position, which was a lower level position, at the M facility.

A week after the grievant transferred to her lower level position at the M facility, she asserts that she heard rumors that transfers and placements were being granted for E facility employees. On June 18, 2012, the grievant confirmed the rumors that one of the E facility employees would be transferred to the agency’s H facility in July without going through the competitive recruitment process. The grievant alleges that she would not have applied, nor transferred, to a lower level position at the M facility had she known that the agency would place its E facility employees in other agency facilities without proceeding through the competitive recruitment process. The grievant subsequently filed a grievance on or about July 3, 2012, asserting that she did not officially learn about the E facility transfers and placements until after an announcement was made at a June 18, 2012 staff meeting.

On July 20, 2012, the agency hand-delivered a letter to the grievant, indicating that it was administratively closing the grievance because of “the untimely receipt of [the grievant’s]

Grievance Form-A on July 11, 2012,” and specifically cited the grievant’s alleged noncompliance with the 30 calendar day rule for the timely initiation of grievances.

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.

The employee bears the burden of establishing the date that the grievance was initiated, for example, by retaining the mailing receipt when the grievance is initiated by mail, or by obtaining an agency date-stamped copy of the grievance when it is initiated by hand delivery.² However, the agency bears the burden of establishing the date that the grievant knew or should have known of the event or action being grieved, often referred to as the “trigger date.”

Here, the event that forms the basis of this grievance is when the grievant knew or should have known about the agency’s E facility decision to transfer and place its employees in other agency facilities without proceeding through the competitive recruitment process. Although the agency does not specifically state what date it believes the grievant should have known about this action, it appears that the agency’s July 20, 2012 letter of administrative closure references this date as June 18, 2012. As such, we conclude that under the facts of this case, the agency has not met its burden of establishing that prior to June 18, 2012, the grievant received unambiguous notice that the agency E facility transfers and/or placements would be allowed without going through the competitive recruitment process.

Accordingly, the July 3, 2012 grievance is timely because it was filed and received by the agency within 30 calendar days of June 18, 2012, even if the date of apparent receipt, July 11, 2012, is considered the initiation date. The parties should note that this ruling addresses only the issue of when the grievant received notice of the E facility’s change in transfer and/or placement practice for purposes of the 30 calendar day grievance filing deadline, and does not address the underlying merits of the grievance.

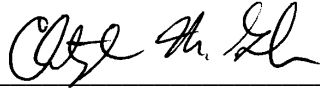
CONCLUSION

By copy of this ruling, the grievant and the agency are advised that the grievant has **five workdays from receipt of this ruling** to either conclude the grievance or inform the first step-respondent that she desires to continue with her grievance. If so notified, the first step-respondent shall provide a written response to the grievance within five workdays of the

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

² See *Grievance Procedure Manual* § 2.2.

grievant's confirmation that she desires to advance her grievance. EDR's rulings on matters of compliance are final and nonappealable.³



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³ See Va. Code § 2.2-1202.1(5).