

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: August 22, 2012; Ruling No. 2013-3399; Agency: Department of Corrections; Outcome: Grievant Not in Compliance.



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

RECONSIDERED COMPLIANCE RULING

In the matter of the Department of Corrections
Ruling Number 2013-3399
August 22, 2012

The grievant has requested that the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management reconsider EDR Ruling Number 2012-3370 in which it was determined that his May 17, 2012 grievance with the Department of Corrections (the agency) was not timely initiated. For the reasons set forth below, EDR will not modify its original ruling.

FACTS

The same facts as stated in EDR Ruling Number 2012-3370 are relevant to this grievance. In short, 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.

DISCUSSION

The grievant relies on an agency policy that is claimed to state essentially that a separated employee will be notified of certain matters, principally related to benefits, "upon separation" to indicate that the second letter, dated April 20, 2012, was effectively the grievant's separation letter. EDR reviewed the April 20, 2012 letter for its original ruling and was not so persuaded. The grievant was separated when the grievant received the first letter on April 10, 2012, and any argument otherwise is unpersuasive. Though the agency did not choose the best way to go about providing such notice, the grievant knew or should have known that the agency no longer considered him an employee at that time. Because 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 the grievance was untimely when initiated more than 30 calendar days from April 10, 2012.²

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

² EDR is similarly unpersuaded by the grievant's reliance on a single federal court case to suggest that his injury was not complete until receipt of the April 20, 2012 letter. Even assuming that case was analogous to the situation

The grievant additionally argues that due to his knowledge of and reliance on the above-mentioned agency policy, his untimeliness should be excused. The grievant argues that because he knew about the agency policy, he was waiting for a memorandum like that received on April 20, 2012 to indicate when his separation occurred. Whether considered an argument of estoppel or “just cause,” the results of the original ruling do not change. Again, EDR reviewed that letter for the initial ruling and did not find anything about it that would have served to excuse the grievant’s untimeliness.³ Upon review of the actual policy language (the Memorandum cited was superseded by the agency’s *Standards of Conduct* policy) and the language included in the April 20, 2012 letter, we find no definitive statements that could reasonably mislead an individual to believe that the termination was not effective until such a letter was received. There is simply no way to suggest reasonably that the grievant should not have known that he no longer had a job with the agency upon receiving the first letter on April 10, 2012. Consequently, because there was nothing beyond the grievant’s control preventing him from filing the grievance on time, there is no just cause for the delay.

The grievant also states that he was not aware that he would not be eligible for re-hire with the agency until receiving the April 20, 2012 letter. While we cannot disagree with that position, the *Grievance Procedure Manual* in effect for purposes of this grievance provided that once an employee is separated, he or she can only challenge the separation.⁴ Although a timely challenge to the separation would necessarily have included a challenge to the status of being ineligible for re-hire, the additional discovery of that information does not start a new 30-day clock for initiation of a grievance because it was not an issue, in and of itself, the grievant had access to challenge.

CONCLUSION

EDR declines to modify its original decision. As such, EDR again 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.⁵



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addressed in this ruling, which it does not appear to be, we are not convinced that the grievant’s injury was not complete once he had been deprived of a job by the agency, which was done well in advance of the April 20, 2012 letter.

³ See EDR Ruling No. 2012-3370.

⁴ See *Grievance Procedure Manual* § 2.3 (2004).

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