

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: August 3, 2012; Ruling No. 2013-3401; Agency: Department of Behavioral Health and Development Services; Outcome: Grievant Not in Compliance.



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

COMPLIANCE RULING

In the matter of Department of Behavioral Health and Developmental Services
Ruling Number 2013-3401
August 3, 2012

The grievant has filed with the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management a Dismissal Grievance concerning her May 13, 2012 termination from employment. The Department of Behavioral Health and Developmental Services (the agency) asserts that the grievance does not comply with the grievance procedure because it was not initiated timely, and further, that the grievance challenges the same management action challenged by another grievance. For the reasons set forth below, EDR determines that the grievance is untimely and may be administratively closed.¹

FACTS

In her grievance, the grievant has challenged her separation from employment and seeks reinstatement with transfer to another facility, along with backpay and the removal of any records in her personnel file about this occurrence. According to the Grievance Form A, the grievant's dismissal date was May 13, 2012. The grievant mailed the current grievance on July 30, 2012.

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.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 event that forms the basis of this grievance is the grievant's dismissal on May 13, 2012. Therefore, she should have initiated her grievance within 30 days, i.e., no later than June 12, 2012. Because the grievant did not initiate this grievance until July 30, 2012, the

¹ Because EDR finds that this grievance is untimely, we do not need to reach the question of whether the grievance challenges the same management action or omission challenged by a previous grievance.

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

challenge to her separation is untimely. The only remaining issue is whether there was just cause for the delay.

The grievant provides no explanation for her late filing. However, EDR has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.³ A grievant's lack of knowledge about the grievance procedure and its requirements does not constitute just cause for failure to act in a timely manner. Therefore, EDR concludes that the grievant has failed to demonstrate just cause for her delay.

CONCLUSION

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.⁴



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³ See, e.g., EDR Ruling No. 2009-2079; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

⁴ See Va. Code §§ 2.2-1202.1(5); 2.2-3003(G).