

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: December 18, 2012; Ruling No. 2013-3449; 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 2013-3449
December 18, 2012

The grievant has requested a ruling on whether his September 13, 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, the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management determines that the grievance is untimely and will remain administratively closed.

FACTS

The grievant challenges a Group III Written Notice received on March 29, 2012, for sleeping during work hours. Subsequently, the grievant became ill and states that he was out of work from April 13, 2012 to July 23, 2012 and from July 29, 2012 to August 11, 2012. The grievant had requested to meet with the facility's warden regarding the discipline issued, and this meeting took place on August 17, 2012. The warden did not alter the discipline issued to the grievant following this meeting. The grievant submitted his grievance on or about September 13, 2012.¹

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 Group III Written Notice, issued on March 29, 2012. Therefore, the grievant should have initiated his grievance within 30 days, i.e., no later than April 28, 2012. Because he did not initiate his grievance until on or about September 13, 2012, the grievance is untimely. The grievant argues that the 30-day

¹ This date is listed on the Grievant's Form A. Whether the grievance was actually initiated on this date or a few days later is not material to the outcome of this ruling.

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

period started following his meeting with the warden on August 17, 2012. We find this argument unpersuasive. EDR has long held that waiting for the outcome of discussions with management does not constitute just cause for failure to initiate a grievance in a timely manner.³ Thus, the only remaining issue is whether there was just cause for the delay.

The grievant cites to an illness and period of hospitalization as an explanation for this late filing. EDR has long held that illness or impairment does not automatically constitute “just cause” for failure to meet procedural requirements; to the contrary, in most cases it will not.⁴ Illness may constitute just cause for delay only where there is evidence indicating that the physical or mental impairment was so debilitating that compliance with the grievance procedure was virtually impossible.⁵

The grievant has provided certification from two health care providers that his condition rendered him incapable of filing a grievance from April 15, 2012 through April 19, 2012 and from April 23, 2012 through April 30, 2012. However, even taking this information as just cause for a delayed filing during the noted time periods, it does not support the grievant’s untimeliness of almost six months past the issuance of the Written Notice. While EDR is sympathetic to the grievant’s experience, the grievant has submitted no evidence to support a finding that the grievant was incapacitated to the point that he was unable to protect his grievance rights to such an extent that the 30-day period should be extended six months. Rather, it appears that the grievant was waiting to file the grievance until after he was able to meet with the facility’s warden, and as stated above, this does not constitute just cause for a delayed filing.

CONCLUSION

For the reasons set forth above, EDR concludes that the grievance was not timely initiated and there is no 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.⁶



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³ See, e.g., EDR Ruling No. 2006-1082; EDR Ruling No. 2004-600; EDR Ruling No. 2003-106.

⁴ See, e.g., EDR Ruling No. 2006-1201.

⁵ *Id.*; see also EDR Ruling No. 2005-1040.

⁶ Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).