

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: December 4, 2012; Ruling No. 2013-3483; Agency: Department of Juvenile Justice; Outcome: Grievant in Compliance.



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

COMPLIANCE RULING

In the matter of Department of Juvenile Justice
EDR Ruling Number 2013-3483
December 4, 2012

The grievant has requested a ruling on whether her grievance, dated March 8, 2012, with the Department of Juvenile Justice (the agency) is in compliance with the grievance procedure. The agency asserts that the grievance was not timely initiated. For the reasons set forth below, EDR determines that the grievance is timely and may proceed.

FACTS

On February 10, 2012, the agency issued a Written Notice to the grievant. According to the grievant, she placed a Grievance Form A in the inbox of the member of management who issued the Written Notice (Mr. L) on March 8, 2012. Mr. L stated in his response to the grievance that it was not received until March 12, 2012. As such, the agency asserts that the grievance was not timely initiated and administratively closed the grievance. The grievant has now sought a ruling from EDR to determine whether she was compliant with the grievance procedure.

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.

In this case, the event that forms the basis of the grievance is the agency's issuance of the Written Notice. EDR has long held that in a grievance challenging a disciplinary action, the 30 calendar-day timeframe begins on the date that management presents or delivers the Written Notice to the employee.² Thus, the grievant should have initiated this grievance within 30 days, i.e., no later than March 11, 2012. It was initially the agency's position that the grievance was

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

² E.g., EDR Ruling No. 2005-986; EDR Ruling No. 2003-147; EDR Ruling No. 2002-118.

not “received” until one day after that, on March 12, 2012.³ However, whether this grievance was timely initiated depends not on when it was received, but when it was initiated.

Under the grievance procedure, timely initiation of a grievance is not necessarily predicated upon timely delivery of the grievance to management. For example, a grievance is considered timely if it is mailed, faxed, or even placed in a supervisor’s inbox within the 30-day timeline, regardless of the fact the grievance may not be received or reviewed until after the deadline passes.⁴ Although it is the grievant’s burden to establish the timely initiation of a grievance, the grievant has met this burden here. First, the grievant’s explanation that she placed the grievance in Mr. L’s inbox on March 8, 2012 has not been contradicted. We find the grievant credible in her explanation. Further, she has offered a signed statement of a co-worker that corroborates her claim to a degree. Lastly, the grievant has stated that there is no way she could have delivered the grievance to Mr. L on the morning of March 12, 2012, when Mr. L is alleged to have received it, because she did not arrive at work until the afternoon of March 12th. Consequently, it stands to reason that the Grievance Form A had indeed been placed in Mr. L’s inbox prior to March 12, 2012, making the grievance timely.

CONCLUSION

For the reasons discussed above, EDR has determined that this grievance was filed timely within the 30 calendar-day period. By copy of this ruling, the parties are advised that within five workdays of the receipt of this ruling, the appropriate second step-respondent must respond to the grievance on the merits.⁵ EDR’s rulings on matters of compliance are final and nonappealable.⁶



Christopher M. Grab
Director
Office of Employment Dispute Resolution

³ The agency now states that it has no objection to the grievance proceeding.

⁴ *E.g.*, *Grievance Procedure Manual* § 2.2 (“[F]or purposes of establishing when a mailed grievance was initiated, the postmark date is considered the initiation date.”).

⁵ It appears that there has already been a meeting between the grievant and the prior second step-respondent in this grievance. However, if both parties agree, another meeting could be held at the second step.

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