

Issue: Compliance/5-day rule; Ruling Date: February 3, 2003; Ruling #2002-188;
Agency: Department of Juvenile Justice; Outcome: grievance remains closed due to
grievant out of compliance with the grievance procedure.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Juvenile justice
Ruling Number 2002-188
February 4, 2003

The grievant has requested a compliance ruling regarding his January 14, 2002 grievance with the Department of Juvenile Justice (DJJ). The grievant is challenging the agency's claim that he failed to appeal this Department's September 16, 2002 ruling to the circuit court within the mandated time period. Additionally, the agency claims that the grievant is attempting to appeal a final and nonappealable compliance ruling by this Department, which held that he may not further pursue the issue of a 1995 salary adjustment through the grievance process.

FACTS

The grievant is employed as a Juvenile Corrections Sergeant. On January 14, 2002, he initiated a grievance with DJJ claiming that management had misapplied the state compensation policy (1) when it failed to grant him a 1995 salary adjustment, which was awarded to all employees in the Juvenile Correctional Officers Series and (2) by paying new employees a higher salary than long-term employees. The agency head replied that the grievant did not initiate his grievance on the issue of the 1995 salary adjustment within the 30 calendar day time period required by the grievance procedure. He further replied that the remaining issue of misapplication of policy (current salary disparities between new and long-term employees) did not qualify for hearing.

The grievant appealed to this Department the agency head's challenge on timeliness and the denial of qualification. On September 16, 2002, this Department issued a compliance and qualification ruling upholding the agency head's challenge on timeliness and denying qualification of the misapplication of policy issue.

On September 27, 2002, the grievant notified the agency's human resource department that he wished to appeal this Department's rulings to the circuit court. By letter on the same date, the agency noted that the grievant was out of compliance by attempting to appeal to the circuit court a compliance issue, which was final and nonappealable. Further, the agency noted that the grievant's appeal was out of

compliance with the grievance procedure because it had not been submitted within the mandated five workdays of receiving this Department's ruling.¹

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.² That process assures that the parties first communicate with each other about the noncompliance, and resolve any compliance problems voluntarily, without this Department's involvement. Specifically, the party claiming noncompliance must notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance.³ If the grievant is the noncompliant party and fails to correct the alleged noncompliance, this Department has long held that the agency may administratively close the grievance by notifying the grievant in writing that (i) the grievance has been administratively closed, and (ii) the grievant may challenge the closing of his grievance by requesting a compliance ruling from this Department.⁴ If the grievant requests a ruling and this Department finds that there was just cause for the grievant's failure to advance the grievance after receiving written notice from the agency (e.g., grievant's physical or mental incapacity), this Department may order that the grievance be reopened.

Compliance Ruling on 1995 Salary Adjustment:

Under the Code of Virginia, the Director of this Department has been granted the authority to render final decisions on all matters related to procedural compliance with the grievance procedure.⁵ Accordingly, decisions on matters of compliance are not subject to review by any governmental authority or court. In this case, the compliance determination contained in this Department's ruling of September 16, 2002 remains unchanged -- the grievant is out of compliance with the grievance procedure, and his grievance on this issue is closed; thus, this issue cannot be appealed to a circuit court under the grievance procedure.

Qualification Ruling on Alleged salary disparity between new and long term employees:

Regarding the agency's claim that the attempt to appeal this misapplication of policy issue was untimely, a ruling would be moot because by the time that the agency notified the grievant in writing of the alleged procedural violation, as required by the grievance procedure, he had already cured the violation by submitting his appeal. Accordingly, the agency's human resources department is directed to forward the grievance record to the circuit court in the jurisdiction in which the grievance arose

¹ *Grievance Procedure Manual*, § 4.4, page 12.

² *Grievance Procedure Manual*, § 6, pages 16-18.

³ *Grievance Procedure Manual*, § 6.3, page 17

⁴ *Id*

⁵ Va. Code § 2.2-100 (5).

within 5 workdays of receipt of this decision. This compliance ruling is consistent with others issued by this Department in comparable situations,⁶ and is final and nonappealable.⁷

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⁶ See EDR Ruling Number 2002-175.

⁷ Va. Code § 2.2-1001 (5).