

Issue: Compliance-5-day rule; Ruling Date: February 6, 2003; Ruling #2003-004;  
Agency: Department of Corrections; Outcome: Grievant out of compliance.



***COMMONWEALTH of VIRGINIA***  
***Department of Employment Dispute Resolution***

**COMPLIANCE RULING OF DIRECTOR**

In the matter of the Department of Corrections  
Ruling Number 2003-004  
February 6, 2003

The grievant has requested a compliance ruling in his October 31, 2002 grievance with the Department of Corrections (DOC or the agency). The agency claims that the grievant failed to advance his grievance to the next management resolution step within the mandated five workdays from receipt of the first-step response and that the initiation of a grievance such as this is not the appropriate procedure to address issues of noncompliance concerning an earlier grievance. For the reasons discussed below, this Department has determined that the October 31, 2002 grievance is concluded for noncompliance with the grievance process.

**FACTS**

At the time of his grievance, the grievant was employed as a Buildings & Grounds Supervisor A. On October 24, 2002, the grievant filed a grievance to challenge his layoff. He asserts that the agency failed to respond to this grievance within the mandated five work day period.

On October 31, 2002, the grievant initiated a second grievance to contest the agency's alleged failure to timely respond to the October 24, 2002 grievance. At the first resolution step, the agency determined that the October 31<sup>st</sup> grievance was out of compliance with the grievance procedure because it merely contested the procedural compliance of the earlier October 24 grievance.

**DISCUSSION**

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>1</sup> 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. If the agency is the noncompliant

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<sup>1</sup> *Grievance Procedure Manual*, § 6, pages 16-18.

party, the grievant must notify the agency head of the alleged noncompliance. (e.g., a failure to respond to a grievance within five work days) and allow the agency another five work days to cure the violation before requesting a ruling from this Department. An agency's procedural noncompliance in one grievance is not to be addressed through the filing of a second grievance.

In the present case, instead of following the established process for addressing an agency's alleged noncompliance, the grievant initiated a separate grievance. As stated above, initiating a separate grievance for this purpose is inappropriate. Therefore, the October 31, 2002 grievance is concluded for noncompliance with the grievance procedure.

#### CONCLUSION

For the reasons discussed above, this Department has determined that the grievant is out of compliance with a substantial procedural requirement of the grievance process. By copy of this ruling, the parties are notified that the October 31, 2002 grievance is concluded and no further action needs to be taken. This Department's rulings on matters of compliance are final and nonappealable.<sup>2</sup>

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Director

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<sup>2</sup> Va. Code § 2.2-1001(5).