

Issue: Compliance/other; Ruling Date: January 27, 2003; Ruling #2003-009, 018; Agency: Virginia Department of Transportation; Outcome: parties to consult with appointed hearing officer.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Transportation
Ruling Numbers 2003-009 & 2003-018
January 27, 2003

By letter dated January 10, 2003, the grievant requests a compliance ruling from this Department. The grievant claims that management has failed to respond to his request for documents and information relative to his October 24, 2002 grievance. In addition, on January 23, 2003, the grievant requested a second compliance ruling asserting that a hearing officer should not have been appointed to hear his grievance because this Department had not yet addressed his January 10, 2003 ruling request.

FACTS

The grievant is employed with the Virginia Department of Transportation (VDOT or the agency). The grievant was issued a Group II Written Notice with suspension for personal use of the internet during business hours. In response to the Group II Written Notice, the grievant initiated a grievance on October 24, 2002. On December 11, 2002, and on several days following, the grievant sought extensive documentation and information from the agency relative to his grievance. The agency supplied a portion of the requested information, sought further clarification on some requested documents, and stated that still other requested documents were unavailable. Unsatisfied with the information provided, the grievant sent a letter of noncompliance to the agency head on December 18, 2002. The agency did not respond to the grievant's letter of noncompliance and as such, the grievant seeks a ruling from this Department on whether the agency has failed to comply with the grievance procedure. The grievant presented his compliance ruling request to this Department on January 10, 2003, the same day that the agency forwarded its request for the appointment of a hearing officer to preside over the adjudication of this grievance. On January 21, 2003, a hearing officer was appointed to address the merits of the October 24, 2002 grievance. On January 23, 2003, the grievant requested a second compliance ruling, this one based on this Department's appointment of a hearing officer while his first ruling request was pending.

DISCUSSION

In the January 23, 2003 ruling request, the grievant asserts that a hearing officer should not have been appointed because of the pending January 10th ruling request. The grievant is correct that "[a] challenge to EDR will *normally* stop the grievance process

temporarily.”¹ However, in a case such as this where the agency’s request for the appointment of a hearing officer is advanced on the same day as the grievant’s ruling request, it makes little sense to halt the grievance process so that EDR can sort out the document production dispute. At this late stage in the grievance process, the *only* purpose for which the requested documents have any bearing is the grievance hearing. Moreover, the hearing officer who will preside over the hearing will be called upon to make relevancy determinations on *all* evidence presented at hearing. For both the hearing officer and this Department to rule on the document issues *at this stage in the grievance process* would be redundant and an inefficient use of state resources. Thus, allowing the hearing officer to make the determination of whether a particular document should be produced, once the grievance has been qualified, is simply a matter of administrative efficiency.²

Accordingly, all remaining disputes relating to the production of documents should be presented to the hearing officer for his determination. If either party to this grievance later believes that the hearing officer exceeded his authority or failed to comply with the grievance procedure by ordering or failing to order the production of specific documents, that party may then request a compliance ruling from this Department.

The parties are advised to contact the hearing officer prior to the scheduled hearing date to request and discuss the production of documents in this matter. This Department’s rulings on matters of compliance are final and nonappealable.³

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Director

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¹ See *Grievance Procedure Manual* § 6.1, page 16 (emphasis added).

² If the grievance were still at the resolution steps stage of the grievance process or even at the agency head’s qualification stage, the grievance process would have halted as the requested documents may have had some bearing on an agency respondent’s response or the agency head’s determination. Because this grievance had proceeded through all resolution steps and had been qualified prior to the ruling request, the requested documents could have no bearing on any agency management action. Therefore, there was no reason to stop the grievance process. We note also that §8.2 of the *Grievance Procedure Manual* states that if documents are denied prior to the appointment of a hearing officer, the requesting party *may* seek relief from this Department. This provision is intended to provide general guidance to parties as to whom they should direct their request for relief. This provision does *not* divest from this Department the discretion to pass to the hearing officer the *initial* determination of document relevancy *when, as in this case, the grievance has passed through each of the resolution steps and has been qualified for hearing.*

³ See Va. Code § 2.2-1001(5).