

Issue: Compliance/Multiple Grievances; Ruling Date: March 4, 2003; Ruling #2003-024; Agency: Department of Military Affairs; Outcome: Agency in compliance



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Military Affairs
Ruling Number 2003-024
March 4, 2003

The grievant has requested a compliance ruling in her grievance initiated on January 24, 2003. The Department of Military Affairs (DMA or the agency) administratively closed the January 24, 2003 grievance stating that (1) it duplicates the grievant's September 9, 2002 grievance; and (2) the issues raised in the January 24th grievance have been ruled upon by the hearing officer in proceedings related to the September 9th grievance and any disagreement with that decision should not be addressed by initiating a separate grievance. For the reasons discussed below, this Department concludes that the grievant has failed to comply with the grievance procedure and as such, the January 24, 2003 grievance is administratively closed.

FACTS

The grievant is employed as a Law Enforcement Officer I with DMA. On September 9, 2002, the grievant initiated a grievance alleging that the agency retaliated against her after she made complaints regarding a co-worker's behavior, which she claimed was intimidating and physically threatening. On January 3, 2003, this Department qualified the September 9th grievance for hearing. Thereafter, the grievant and her representative, in an attempt to prepare for the upcoming hearing, went to the agency to interview witnesses. On January 21, 2003, the agency notified the grievant that because she was out on temporary disability status, there was no reason for her to enter agency premises unless she had official business to perform and called in advance for approval. Due to his allegedly harassing, intimidating and disruptive behavior during witness interviews, the agency notified the grievant's representative on January 22, 2003 that he too was not to enter agency premises except to appear as the grievant's representative at her February 5, 2003 grievance hearing. Subsequently, on January 24, 2003, the grievant was advised that she could speak with potential witnesses at the agency by contacting the agency representative, who would then notify the individual employee of the grievant's desire to speak with him or her.

In her January 24, 2003 grievance, the grievant alleges that denying her access to agency premises constitutes continued retaliation and impedes her preparation for hearing. On January 31, 2003, the first-step respondent administratively closed the January 24, 2003 grievance for failure to comply with the grievance process. That same day, the grievant requested a compliance ruling from this Department.

DISCUSSION

An employee's grievance must not duplicate another grievance challenging the same action or arising out of the same facts.¹ If there is duplication, management may notify the employee that the grievance will be administratively closed due to noncompliance.² In addition, if a party to a grievance believes that the other party is out of compliance with the grievance process, or that the hearing officer has abused or exceeded his authority under the grievance procedure, there are compliance and administrative review procedures listed in the *Grievance Procedure Manual* to resolve those issues;³ filing a second grievance is not one of those listed procedures.

In her September 9, 2002 grievance, the grievant alleges retaliation for making complaints regarding a co-worker's behavior. The January 24, 2003 grievance alleges that the agency's refusal to allow the grievant access to agency premises and to conduct employee interviews impedes her preparation for hearing in her first grievance and constitutes continued retaliation. As such, both grievances involve the issue of agency retaliation for the grievant's complaints regarding a co-worker's behavior. Accordingly, this Department concludes that the January 24, 2003 grievance challenges the same management action (i.e., retaliation) as the September 9, 2002 grievance and therefore may be administratively closed for noncompliance with the grievance process.

Further, at her February 5, 2003 hearing, the grievant had the opportunity to request the admission of any and all evidence of retaliation, including the events that formed the basis of her January 24, 2003 grievance. If the hearing officer denied the admission of evidence relating to events set forth in the January 24, 2003 grievance, and/or decides the grievance in the agency's favor, the grievant may seek an administrative and judicial review of the hearing decision, if she believes the decision is contrary to the grievance procedure, state policy, or the law.⁴

CONCLUSION

¹ See *Grievance Procedure Manual* § 2.4, page 7.

² *Id.*

³ See *Grievance Procedure Manual* 6.0, pages 16-19.

⁴ See *Grievance Procedure Manual*, § 7.2(a)(3), page 19 and § 7.3(a), page 20.

For the reasons discussed above, this Department has determined that the grievant is out of compliance with substantial procedural requirements of the grievance process. By copy of this ruling, the parties are notified that the January 24, 2003 grievance is concluded and no further action needs to be taken. This Department's rulings on matters of compliance are final and nonappealable.⁵

Claudia T. Farr
Director

⁵ Va. Code § 2.2-1001(5).