

Issue: Compliance/Conduct of Hearing; Ruling Date: March 19, 2003, Ruling #2003-058; Agency: Department of Corrections; Outcome: grievant and hearing officer in compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Corrections/ Case No. 5668
March 19, 2003
EDR Ruling Number 2003-058

The Department of Corrections (DOC or agency) has requested a compliance ruling regarding a November 12, 2002, grievance initiated by a DOC Corrections Officer. The agency seeks clarification on the issues qualified for hearing.

FACTS

The grievant initiated a grievance on November 12, 2002, challenging a Group I Written Notice that was issued on October 28, 2002 for purported unsatisfactory attendance or excessive tardiness. In addition, the grievance as initiated also alleges (1) retaliation for prior grievance activity and for challenging the accuracy of a performance evaluation; (2) misapplication or unfair application of several agency policies and internal operating procedures; and (3) the issuance of an unwarranted Notice of Improvement Needed dated October 28, 2002.

The grievance proceeded through the resolution steps and advanced to the agency head for a qualification determination. The agency head qualified the grievance for hearing, without raising any issues of the grievant's noncompliance with the grievance procedure, such as untimeliness, and without expressly denying qualification of any of the grievance's other claims, noting on the Grievance Form A only that "disciplinary actions are grievable." Moreover, the Form A did not edify the grievant that she could appeal any denial of qualification to this Department. Upon the agency's request, a hearing officer was appointed to hear the grievance.

At the pre-hearing conference, a question arose over exactly which issues had been qualified for hearing. The hearing officer, apparently observing that the agency head had qualified the grievance without expressly denying qualification of any of the grieved issues, concluded that all issues were appropriately before him for adjudication. In his ruling request to this Department, the agency head asserts that the "other issues were not reviewed for qualification for hearing and therefore should not be heard."

DISCUSSION

Under the grievance procedure, management step respondents may challenge a grievant's compliance with the grievance procedure "at any point through the agency head's qualification decision."¹ Further, at the qualification stage, agency heads may deny qualification of any issue contained in a grievance that does not automatically qualify for a hearing. If denying qualification, the agency head's response on the Grievance Form A "should notify the employee of his procedural options," i.e., his right to appeal the denial to this Department.² However, once a grievance has progressed to the hearing stage, such issues of compliance and qualification generally may not be revisited by either party. For example, "by proceeding with the grievance after becoming aware of a procedural violation, one may forfeit the right to challenge the noncompliance at a later time." Similarly, once a grievant's claims are submitted on her Form A, thus initiating her grievance, "additional claims may not be added."^{3 4}

In light of all the above, we conclude that in this case, the agency effectively waived its right to revisit compliance or qualification issues during the hearing stage that it could have properly raised during the management and qualification phase of this grievance. Thus, the issues appearing on the grievant's Form A are properly before the hearing officer, who, depending on his findings of fact, may only "order appropriate remedies" and "may not grant relief that is inconsistent with law or policy."⁵ This Department's rulings on compliance are final and nonappealable.⁶

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

² *Grievance Procedure Manual* § 4.2 and §4.3, pages 11-12.

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

⁴ *Grievance Procedure Manual*, §2.4, page 6.

⁵ *Grievance Procedure Manual*, §5.9, page 15.

⁶ Va. Code § 2.2-1001 (5).