

Issue: Compliance/agency claims grievance is duplicative; Ruling Date: February 13, 2004; Ruling #2003-496; 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 Department of Corrections  
Ruling No. 2003-496  
February 13, 2004

The grievant has requested a compliance ruling in his grievance initiated on December 1, 2003 with the Virginia Department of Corrections (DOC or the agency). The agency claims the grievance is duplicative of other grievances initiated by the grievant and thus is out of compliance with the grievance procedure. For the reasons set forth below, this Department concludes that the grievant has failed to comply with the grievance procedure and as such, the December 1, 2003 grievance is administratively closed.

FACTS

The grievant is employed as a Corrections Sergeant with a DOC facility in the Western Region. Dissatisfied with the work environment at his facility, the grievant applied for a number of openings for the position of Lieutenant in the Western Region, but he was not selected for promotion. The grievant timely initiated four grievances, each challenging his non-selection at a different facility and alleging discrimination, retaliation and/or misapplication of policy by management.<sup>1</sup> As evidence of discrimination, the grievant asserted that the Western Region overlooks qualified African Americans for promotion and that there has never been an African American as a security supervisor. As relief, the grievant has requested reasonable consideration and equal opportunity for promotion.

In response to those four grievances, the third step respondent (the Regional Director) stated that the grievant's claims were without merit because "[a]ll promotional opportunities are processed in accordance with Federal and State Statutes as well as Administrative policies and procedures." Subsequently, on December 1, 2003, the grievant initiated this grievance alleging that the Regional Director has shown no

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<sup>1</sup> The grievances were initiated on May 9, 2003 (two separate grievances), May 26, 2003 and June 20, 2003. These grievances are pending before this Department for qualification rulings.

favorable actions to his prior four grievances and has denied him consideration and equal opportunity for promotion and advancement without racial prejudice and/or retaliation. As relief, in this grievance, the grievant seeks advancement to the rank of Lieutenant. Additionally, the grievant requests the opportunity to review the affirmative action plan for the Western Region.

### DISCUSSION

An employee's grievance must not duplicate another grievance challenging the same action or arising out of the same facts.<sup>2</sup> If there is duplication, management may notify the employee that the grievance will be administratively closed due to noncompliance.<sup>3</sup>

In his first four grievances, the grievant challenges his non-selection for promotion to Lieutenant as discriminatory and/or retaliatory. Management failed to grant his requested relief. The December grievance challenges the Regional Director's failure to respond favorably to the grievant's requests in these grievances.<sup>4</sup> When examined, the December grievance challenges the same management actions (the failure of management to promote him to Lieutenant) and raises the same issues (retaliation and/or racial discrimination) as raised in the first four grievances. Therefore, the December 1 grievance is duplicative of the earlier ones and is out of compliance with the grievance process.

Furthermore, under the grievance statute, all documents, absent just cause, relating to actions grieved shall be made available upon request from a party to the grievance, by the opposing party.<sup>5</sup> This Department's interpretation of the mandatory language "shall be made available" is that absent just cause, all relevant grievance-related information *must* be provided. Because an affirmative action plan for the Western Region relates to the discrimination allegations contained in the grievances still pending, DOC is instructed to provide a copy of any such plan to the grievant for his review within five workdays of its receipt of this ruling. If DOC has just cause for not providing the document, then agency management should notify the grievant in writing.

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<sup>2</sup> See *Grievance Procedure Manual* § 2.4, page 7.

<sup>3</sup> *Id.*

<sup>4</sup> In addition to challenging the alleged failure to grant his relief, the grievant also notes the failure of anyone whom he has contacted regarding this matter to address the issue of the Regional Director allegedly stating "he was denying me consideration and equal opportunity for promotion and advancement without being subjected to racial prejudice and/or retaliation." The grievant appears to have misunderstood the Regional Director's statement. The Regional Director is not asserting that the grievant has been denied equal opportunity by any of DOC's facilities, but rather that such a claim by the grievant lacks merit because the selection processes being challenged by the grievant were all handled in accordance with law and policy.

<sup>5</sup> Va. Code § 2.2-3003(E); *Grievance Procedure Manual* § 8.2, page 21.

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 December 1, 2003 grievance is concluded and no further action needs to be taken. Additionally, the agency must respond within five workdays of its receipt of this ruling to the grievant's request to review the affirmative action plan for the Western Region. This Department's rulings on matters of compliance are final and nonappealable.<sup>6</sup>

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Director

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<sup>6</sup> See Va. Code § 2.2-1001(5).