

Issue: Compliance/agency claims two grievances filed are duplicative; Ruling Date: April 7, 2004; Ruling #2004-672; Agency: Department of Corrections; Outcome: grievances are duplicative and one may be administratively closed



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution
COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Corrections
Ruling Number 2004-672
April 7, 2004

The Department of Corrections (DOC or the agency) has requested a compliance ruling in two grievances initiated by the grievant on February 4, 2004. The agency asserts that the two grievances are not in compliance with the grievance procedure because they are duplicative.¹ For the reasons discussed below, grievance #1 is duplicative of grievance #2 and may be administratively closed.

FACTS

The grievant is employed as a Hearings Officer. On January 5, 2003, the grievant was issued a Group I Written Notice for inadequate or unsatisfactory performance. On February 4, 2004, the grievant initiated two separate grievances to challenge the disciplinary action, both using the expedited process. Although both grievances were initiated on the same date, they proceeded separately to the second resolution step and qualification, resulting in the agency head first making a qualification determination on Grievance #2.

In grievance #1, the grievant challenged the disciplinary action as the single issue raised in her grievance. A second-step response was provided on February 19, 2004, denying the relief requested. On March 8, 2004, the grievant advanced her grievance for a qualification determination. The agency head challenged that grievance #1 was duplicative of grievance #2.

In grievance #2, the grievant also challenged the disciplinary action, this time as part of a pattern of inconsistent treatment and harassment dating from April 2000. A second-step response was provided on February 24, 2004, denying the relief requested and asserting that all of the issues raised except the disciplinary action were outside the 30 calendar day time period for initiating a grievance.² Additionally, the second-step respondent asserted that the issue of the Group I Written Notice had been addressed in Grievance #1.

¹ The agency head further recommends that if ruled in compliance, that the two grievances be consolidated for purposes of the hearing. The agency has referred to these grievances as grievance #1 and #2. For ease of identification, the grievance designated #1 by DOC will be referred to as grievance #1 in this ruling. Likewise, grievance #2 (as designated by DOC) will be referenced as grievance #2 in this ruling.

² *Grievance Procedure Manual*, § 2.4 (1), page 6.

On February 25, 2004, the grievant advanced her grievance #2 to qualification, without challenging the compliance issues raised by the second-step respondent. On March 10, 2004, the agency head qualified the disciplinary action for hearing, ruling that all other issues occurring over 30 calendar days before the filing of the grievance were out of compliance. The grievant advanced her grievance for hearing on March 24, 2004.

DISCUSSION

An employee's grievance must not duplicate another grievance challenging the same action or arising out of the same facts.³ When an employee initiates a grievance that duplicates another grievance challenging the same facts, the grievance may be administratively closed due to noncompliance.⁴

In this case, the event that forms the basis of both grievance #1 and grievance #2 is the grievant's receipt of the Group I Written Notice. In both grievances, the grievant alleges that the January 5, 2004 disciplinary action was unfair and unwarranted. Therefore, the two grievances are duplicative of one another and thus out of compliance with the grievance procedure.

CONCLUSION

Grievance #1 should be marked as concluded due to noncompliance and no other action is required. Grievance #2 will proceed to hearing as qualified.⁵ This Department's rulings on matters of compliance are final and nonappealable.⁶

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Director

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³ See *Grievance Procedure Manual* § 2.4, page 7.

⁴ *Id.*

⁵ Because the disciplinary action (Group I Written Notice) occurred within the 30 calendar days preceding the February 4th filing of her grievance, the grievance is timely with respect to those alleged actions (those occurring on or after January 5, 2003, relating to her claim of unfair treatment and harassment). However, any alleged actions related to grievant's harassment/unfair treatment claim that occurred prior to January 5, 2003 may be considered as background evidence only, and not as separate claims for which relief may be granted.

⁶ Va. Code § 2.2-1001 (5).

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