

Issue: Compliance/dispute over second-step meeting; Ruling Date: August 17, 2004;
Ruling #2004-760; Agency: Department of Corrections; Outcome: grievance may move
forward, agency advised to schedule and conduct second-step meeting



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Corrections
Ruling Number 2004-760
August 17, 2004

The grievant has requested a compliance ruling regarding his May 17, 2004 grievance with the Department of Corrections (DOC). The grievant claims that the agency has violated a substantial requirement of the grievance procedure, without just cause, by failing to conduct a timely second-step meeting. The agency contends that no second-step meeting is required because the grievant was granted the relief requested in his grievance at the first respondent step.

FACTS

The grievant is employed as a Corrections Sergeant. On May 6, 2004, he was notified to appear at a disciplinary hearing being conducted for the purpose of discussing a charge against him of unsatisfactory job performance. The notice provided the date of the hearing but failed to provide any other information relating to the alleged offense or an explanation of the evidence in support of the charge. On May 13, 2004, the grievant attended a disciplinary hearing where, without further explanation, he was issued a Group I Written Notice for unsatisfactory performance.

On May 17, 2004, the grievant initiated the present grievance to challenge the disciplinary action and other related issues.¹ As relief, he requested only the removal of the Group I Written Notice. At the first respondent step, the grievant was granted the relief requested by the removal of the disciplinary action. The grievant, however, advanced his grievance to the second-step claiming that all the remaining issues of his grievance had not been addressed. On June 1, 2004, the second-step respondent replied that the grievance was now moot because the relief requested in his grievance had been granted with removal of the disciplinary action due to improper notice.

¹ In addition to the disciplinary action, the grievant also challenged that (1) there was never an investigation to determine what provoked the incident resulting in the disciplinary action; (2) he was subjected to both an informal discussion and a disciplinary hearing; (3) the warden and chief of security had conflicts of interest having participated in the informal discussion held on May 7, 2004. Therefore, the warden should not have presided at the disciplinary hearing and the chief of security should not have issued the disciplinary action; (4) he was subjected to double jeopardy by being verbally counseled and also issued a Written Notice for the same alleged violation; and (5) his rights to due process were violated.

DISCUSSION

The grievant contends that the agency failed to conduct a required second-step meeting. The grievance procedure requires both parties to address procedural noncompliance through a specific process.² That process assures that the parties first communicate with each other about the noncompliance, and resolve any compliance problems voluntarily, without this Department's involvement. Specifically, the party claiming noncompliance must notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance.³ For example, if the grievant believes that an agency has not conducted a required second-step meeting (as the grievant believed in this case), a grievant must notify the agency head of the alleged noncompliance.

Before seeking a compliance ruling from this Department, the grievant must allow the agency five workdays after receipt of the written notice to correct any noncompliance. If after five workdays the grievant believes that the agency has failed to correct the alleged noncompliance, the grievant may request a ruling from this Department. Furthermore, should this Department find that the agency violated a substantial procedural requirement and that the grievance presents a qualifiable issue, this Department may resolve the grievance in the grievant's favor unless the agency can establish just cause for its noncompliance.

Generally, under the grievance procedure, the grievant's request to this Department would be deemed premature because the grievant has not notified the agency head in writing of the alleged noncompliance as mandated by the grievance procedure. However, in the interest of efficiency, this Department will address the grievant's compliance issue.

The grievance procedure provides that "upon receipt of a timely written complaint, management shall review the grievance and respond to the merits thereof."⁴ The response must address the issues and the relief requested and notify the employee of his procedural options.⁵ At the second resolution step, a face-to-face fact-finding meeting must be held.⁶ Accordingly, this Department concludes that the agency has failed to comply with the grievance procedure by failing to conduct the required second-step meeting in order to address the remaining issues of the employee's grievance.⁷

² *Grievance Procedure Manual*, § 6.

³ *Grievance Procedure Manual*, § 6.

⁴ Va. Code § 2.2-3003(D).

⁵ *See* *Grievance Procedure Manual* § 3.

⁶ *See* *Grievance Procedure Manual* § 3.2.

⁷ It should be noted that while the remaining issues should be allowed to move through the management resolution steps, none of them would appear to qualify for hearing because, given the removal of the written notice, the grievant does not appear to have suffered an adverse employment action. *See* EDR Rulings 2004-661, 2003-425, 2003-175, and 2002-109.

APPEAL RIGHTS AND OTHER INFORMATION

For the reasons set forth above, the grievant may continue to advance his grievance through the management resolution steps. By copy of this ruling, the agency is advised that within five workdays of the receipt of this ruling, it must schedule and conduct a second-step meeting. This Department's rulings on matters of compliance are final and nonappealable.⁸

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⁸ See Va. Code § 2.2-3003(G).