

Issue: Compliance/30-day rule/enforcement of hearing decision; Ruling Date: March 15, 2005; 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 Number 2005-968
March 15, 2005

The grievant has requested a compliance ruling in his December 13, 2004 grievance filed with the Department of Corrections (DOC or the agency). The agency asserts that the grievant failed to initiate his grievance within the 30-calendar day time period required by the grievance procedure.

FACTS

The grievant is employed as a Security Sergeant with DOC. On March 11, 2003, the grievant received two Group II Written Notices with removal. In two separate hearing decisions dated July 17, 2003, the hearing officer upheld one of the written notices, rescinded the other written notice and ordered the grievant to be reinstated with "full back pay less any interim earnings with restoration of full benefits and seniority."¹ On December 13, 2004, the grievant initiated a grievance alleging that DOC has failed to comply with the hearing officer's decision regarding restoration of benefits and other alleged lost funds resulting from his discharge from employment.

DISCUSSION

As noted above, DOC administratively closed the December 13, 2004 grievance for failure to comply with the grievance procedure's 30-calendar day initiation requirement. However, given the facts and issues presented in the December 13th grievance, this Department deems it to be more appropriate to view the grievance as being noncompliant with the hearing decision implementation procedures of the grievance procedure.

Specifically, under the grievance procedure, if the grievant believes that the agency has not properly implemented the hearing officer's orders for backpay and restoration of benefits, he may petition the circuit court having jurisdiction in the locality in which the grievance arose for an order requiring implementation of the final hearing

¹ See Decision of Hearing Officer, Case Nos. 5754 and 5755.

decision,² after which both parties should be able to present their respective arguments to the court.

In the present case, instead of following the established process for addressing an agency's alleged failure to implement a hearing officer's decision, the grievant initiated a separate grievance. As stated above, initiating a separate grievance for this purpose is inappropriate as there is an independent process outlined in the grievance procedure for enforcement of a hearing officer's final hearing decision.³ Therefore, the December 13, 2004 grievance is concluded for noncompliance with the grievance procedure. It should be noted that neither the filing of the December 13th grievance nor this ruling prevent the grievant from pursuing an order for implementation from the appropriate circuit court. This Department's rulings on matters of compliance are final and nonappealable.⁴

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Director

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² Va. Code § 2.2-3006(D); *Grievance Procedure Manual* § 7.3(c).

³ See also EDR Ruling #2003-004.

⁴ Va. Code § 2.2-1001(5).