

Issue: Compliance/documents; Ruling Date: February 8, 2006; Ruling #2006-1261;
Agency: Department of Corrections; Outcome: request is premature



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Corrections
Ruling No. 2006-1261
February 8, 2006

The grievant has asked for a compliance ruling from this Department. He alleges that the Department of Corrections (DOC or the agency) failed to comply with the grievance procedure by refusing to provide him with requested documents.

FACTS

The grievant is employed by the agency as a Correctional Officer. On November 23, 2005, the grievant was suspended without pay pending the outcome of a criminal investigation arising from the grievant's alleged involvement in an accident in a state vehicle. The grievant initiated a grievance challenging his suspension on December 7, 2005. As the grievant elected to use the expedited grievance process, his grievance immediately progressed to the second management resolution step. After the second-step respondent denied the grievant's request for relief, the grievant asked the agency head to qualify the grievance for hearing. The agency head denied the grievant's request on January 5, 2006, and the grievant appealed this determination on January 6th.

On December 27, 2005, after the grievant received the second-step response, he requested a number of documents from the agency—specifically, copies of the accident reports of all employees involved in accidents for the past 10 years, BAC and urinalysis testing results for the individuals involved in those accidents, and all disciplinary reports related to those accidents. In a letter dated January 12, 2006, the agency advised the grievant that it found that the documents requested by the grievant were not relevant to the grievance, and that it objected to production of testing results and disciplinary actions on the basis that such documents are confidential. By letter dated January 17, 2006, the grievant requested a compliance ruling from this Department.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.¹ 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

¹ *Grievance Procedure Manual* § 6.1.

claiming noncompliance must notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance.² If the party fails to correct the alleged noncompliance, the complaining party may request a ruling from this Department.

In this case, the grievant's request for a compliance ruling is premature because the grievant has not shown that he first notified the agency head in writing of the alleged procedural violations, as required by the grievance procedure.³ The grievant is therefore advised that if he still desires a compliance ruling from this Department, he must first give written notice of the alleged noncompliance to the agency head and allow the agency five days to correct any noncompliance. Only once the grievant has satisfied this procedural prerequisite will this Department address his claim of noncompliance.

Further, as a general rule, a party may raise a claim of noncompliance at any point in the grievance process.⁴ However, because the grievant's request for qualification is also pending with this Department, if he intends to request a compliance ruling regarding his December 27, 2005 document request, he must give written notice to the agency head within ten work days of the date of this ruling. If he fails to do so, this Department will rule on his request for qualification without regard to the alleged noncompliance. However, if the grievant gives the agency head timely notice of noncompliance, this Department will stay its ruling on the grievant's qualification request until resolution of the compliance matter.

This Department's rulings on matters of compliance are final and nonappealable.⁵

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Director

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² *Grievance Procedure Manual* § 6.3.

³ See EDR Ruling No. 2006-1183 ("For a letter of noncompliance to satisfy this procedural prerequisite, it must, at a minimum, provide clear notice that the party writing the letter considers the other party's conduct to constitute noncompliance, and it must advise the opposing party of the specific conduct which is alleged to be noncompliant.")

⁴ *Grievance Procedure Manual* § 6.3.

⁵ Va. Code § 2.2-3003(G).