

Issue: Compliance/grievance procedure/resolution steps; Ruling Date: September 29, 2006; Ruling #2006-1344; Agency: Department of Corrections; Outcome: agency not in compliance



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Corrections
No. 2006-1344
September 29, 2006

The grievant has requested a compliance ruling regarding the April 4, 2006 grievance he initiated with the Department of Corrections (DOC or agency).

FACTS

The grievant serves as a Corrections Officer B. On March 9, 2006, the grievant was issued a Group III Written Notice under the Standards of Conduct for conduct unbecoming a Corrections Officer. The grievant asserts that he was provided an incomplete and outdated copy of the *Grievance Procedure Manual* by the Human Resource Officer. The grievant further claims that on March 13, 2006 he contacted this Department's AdviceLine and was provided with information that enabled him to obtain a current copy of the *Grievance Procedure Manual*. He states that despite the delay in obtaining a current *Grievance Procedure Manual*, the grievant was nevertheless able to timely initiate his grievance.

The grievant contends that shortly after receiving the Written Notice, the Warden who had issued the discipline was transferred to another institution. The grievant asserts that he again contacted the AdviceLine and was told that because it was the former Warden who had issued the Group Notice, his first-step respondent should be the current Warden. Accordingly, the grievant claims that he presented his grievance to the institution's Human Resource Officer with the instruction that it be forwarded it to the current Warden.

The grievant claims that he had a discussion with the Watch Commander who stated that the Human Resource Officer had called him to find out who the grievant's immediate supervisor was for reasons related to his grievance. The grievant again called the AdviceLine. He states that he was informed that it appeared that the agency was out of compliance with the grievance process. Accordingly, on March 13, 2006, the grievant wrote the agency head to notify him of the agency's purported non-compliance. He essentially asserted that the agency was noncompliant by not allowing him to initiate his grievance with the new Warden.

The grievant asserts that he received a response to his grievance from his Sergeant that was postmarked April 14, 2006. He believes that the response was back-dated and that the Human Resource Officer wrote the response for the Sergeant.

On April 22, 2006, the grievant received a correspondence from the Human Resource Manager that informed him that because the Written Notice was issued by the former Warden she proceeded to process the grievance by presenting it to the first-step respondent, his immediate supervisor. The letter further stated that if the grievant did not advance his grievance within five-workdays, the agency would close it for non-compliance. The grievant responded on April 27, 2006, informing the agency that the Sergeant is not the proper first step respondent in this case because the discipline was issued by the Warden. He subsequently sought a ruling on the matter from this Department.

DISCUSSION

Under the Grievance Procedure, “[i]n grievances involving formal discipline (Written Notices) issued by someone other than the employee’s immediate supervisor, the employee may initiate the grievance with the person who issued the discipline.” In this case, the Written Notice was issued by the former Warden. As discussed above, however, the former Warden left the institution where the grievant is employed and was replaced by another Warden. Thus, because the person who issued the discipline was no longer in the grievant’s chain of command, he should have been allowed to initiate his grievance with the person who now occupies that position: the current Warden, who also serves as the second-step respondent.

In a case such as this, when the grievance is initiated with the second-step respondent, the second-step respondent must set up and hold the second-step meeting within five workdays of the receipt of the grievance. Within five workdays of the meeting, the second step respondent must provide the second-step response. Thus, the current Warden is instructed to arrange and hold the second-step meeting with the grievant within five-workdays of receipt of this ruling.

We note that there is no prohibition against management enlisting the assistance of the Human Resource Department in preparing a response to a grievance. In response to the agency’s contention that it would automatically close the grievance if the grievant did not advance his grievance, we note that an agency may not close a grievance for non-compliance without first seeking a compliance ruling from this Department.¹

¹ Grievance Procedure Frequently Asked Question #29 found on this Department’s Website at: <http://www.edr.virginia.gov/faqs.htm> describes the grievance closing process accordingly:

The other circumstance in which the agency may desire to close a grievance is in a case of abandonment (where the grievant fails to advance his or her grievance). An agency may not, however, close an allegedly non-compliant grievance without first seeking a ruling from the EDR Director. Before seeking such a ruling, the agency must inform the

This Department's rulings on matters of compliance are final and nonappealable.²

Claudia T. Farr
Director

grievant, in writing, of the noncompliance and allow the grievant 5 workdays after receipt of the written notice to correct the noncompliance. If EDR finds that the grievant is out of compliance, EDR will order the grievant to correct the non-compliance. If it is not corrected within the designated timeframe, the agency may close the grievance.

² Va. Code § 2.2-3003(G).