

Issue: Compliance/grievance procedure/documents; Ruling Date: November 22, 2006; Ruling #2007-1472; 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  
Ruling No. 2007-1472  
November 22, 2006

The grievant has asked for a qualification ruling from this Department. In his letter requesting qualification, the grievant also has indicated his dissatisfaction with the agency's alleged failure to respond to his repeated requests for production of documents, which is also documented within the Form A and grievance record. For that reason, this ruling will address the production of documents compliance issue and a forthcoming ruling will address the qualification issue. The grievant alleges that the Department of Corrections (DOC or the agency) has not complied with the grievance procedure by failing to provide him with requested documents.

**FACTS**

On February 8, 2006, the grievant initiated a grievance concerning how his leave time was accounted for during a period of short-term disability (STD) in December 2005 and January 2006. In an attachment to his Grievance Form A, the grievant requested "[d]ocumentation of the hours/days covered by the STD program and an explanation of the time used and the holidays used." The grievance proceeded through the management steps leading to the agency head's decision that the grievance did not qualify for a hearing.<sup>1</sup> The grievant then appealed to EDR.

Based on the grievant's narrative statement sent to this Department, it appears that he has yet to receive the requested documents and continues to seek them. The grievant has also specifically requested "documentation and the formula used that VSDP used to account for the holidays" following the second-step response.

**DISCUSSION**

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>2</sup> That process assures that the parties first communicate with each other about the noncompliance, and resolve any compliance problems voluntarily without this Department's

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<sup>1</sup> This Department has repeatedly held that in determining what, if any, issues have been qualified by an agency head, the plain language of the Grievance Form A or any attachment is determinative. *E.g.*, EDR Ruling Nos. 2006-1388, 1389; EDR Ruling Nos. 2006-1099, 1104; EDR Ruling No. 2005-1015; EDR Ruling No. 2004-611. Here, while the agency head checked the box to qualify the grievance for hearing, his contemporaneously attached letter indicated a clear intention not to qualify. This issue will be addressed further in this Department's qualification ruling in this case. EDR would caution all parties to make sure that all notations on Form A are consistent and correct in the future.

<sup>2</sup> *Grievance Procedure Manual* § 6.1.

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.<sup>3</sup> If the party fails to correct the alleged noncompliance, the complaining party may request a ruling from this Department.

In this case, the grievant has not shown that he first notified the agency head in writing of the agency's alleged failure to produce documents, as required by the grievance procedure.<sup>4</sup> The grievant is therefore advised that if he desires a compliance ruling from this Department regarding the documents he has been seeking, he must first give written notice of the alleged noncompliance to the agency head and allow the agency five workdays 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.<sup>5</sup> However, because the grievant's request for qualification is also pending with this Department, if he intends to request a compliance ruling regarding his requests for documents, 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.<sup>6</sup>

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Claudia T. Farr  
Director

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<sup>3</sup> *Grievance Procedure Manual* § 6.3.

<sup>4</sup> 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.").

<sup>5</sup> *Grievance Procedure Manual* § 6.3.

<sup>6</sup> Va. Code § 2.2-3003(G).