

Issue: Compliance/Grievance Procedure/Resolution Steps; Ruling Date: December 29, 2006;
Ruling Nos. 2007-1486, 2007-1487, 2007-1488; Agency: Department of Corrections: Outcome:
grievant non-compliant; directed to correct non-compliance



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Corrections
Ruling No. 2007-1486, 1487, and 1488
December 29, 2006

The grievant has asked for a compliance ruling from this Department. He alleges that the Department of Corrections (DOC or the agency) has failed to comply with the grievance procedure in two regards. First, the grievant asserts that the first-step respondent allegedly failed to address the “facts” set forth in each of his three grievances. The grievant also claims that the first-step respondent was not truthful in his responses to those grievances.

FACTS

On August 28, 2006, the grievant initiated a grievance challenging the agency’s refusal to accept a Leave Activity Reporting Form, which ultimately led to the docking of the grievant’s pay for 12 hours. (Grievance 1). The first-step respondent answered Grievance 1 on September 6, 2006. The grievant advanced this grievance to the second-step and had a second-step meeting on September 18, 2006. The second-step respondent provided his response on September 26, 2006.

On September 6, 2006, the grievant initiated a grievance challenging the manner in which the Assistant Warden discussed the docking issue with the grievant (Grievance 2). The grievant found the Assistant Warden threatening. The first-step respondent answered Grievance 2 on September 12, 2006. The grievant advanced Grievance 2 to the second-step and had a second-step meeting on September 18, 2006. The second-step respondent provided his response to Grievance 2 on September 26, 2006.

On September 12, 2006, the grievant initiated a grievance that challenged the docking of his pay and, moreover, the agency’s alleged negligent insistence in doing so after the grievant explained that the agency had erroneously refused his Leave Activity Reporting Form (Grievance 3). The first-step respondent answered Grievance 3 on September 20, 2006. The grievant advanced his grievance to the second-step and had a second-step meeting on October 3, 2006. The second-step respondent provided his response to Grievance 3 on October 4, 2006.

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 claiming noncompliance must notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance.² (If the agency is purportedly out of compliance, the grievant must notify the agency head of the alleged non-compliance.) Importantly, all claims of party noncompliance must be raised immediately. For example, if Party A proceeds with the grievance after becoming aware of Party B's procedural violation, Party A may waive the right to challenge the noncompliance.³

Here, it is undisputed that the grievant advanced each of his grievances to the second-step without first formally contesting the first-step responses through the noncompliance process set forth above (notifying the agency head of the non-compliance and allowing 5-workdays to correct it). By proceeding to the next step, the grievant effectively waived his right to contest the agency's alleged first-step noncompliance.

CONCLUSION

Accordingly, within 5 workdays of receipt of this ruling, the grievant is instructed to advance (or conclude) his grievances, if he has not already done so. Because the grievant has waived his right to challenge the agency's alleged first-step noncompliance, it is unnecessary for this ruling to address whether the first-step responses were in compliance with the grievance procedure. We note, however, that while respondents are required to address both the issues raised and relief requested in the grievance,⁴ they are not compelled to address every supporting fact. We further note that while the second-step respondent has characterized the first-step respondent's response in Grievance 3 as apparently "self-serving," the second-step response was responsive to the issues raised and appeared to reflect a good faith effort to resolve the issues raised in the grievance.⁵

This Department's rulings on matters of compliance are final and nonappealable, and have no bearing on the substantive merits of the grievant's complaints⁶

Claudia T. Farr

¹ *Grievance Procedure Manual*, § 6.

² *Grievance Procedure Manual*, § 6.3.

³ *Grievance Procedure Manual*, § 6.3.

⁴ *Grievance Procedure Manual*, § 3.1.

⁵ The second-step responses to Grievances 1 and 2 likewise appear to reflect a good faith effort to resolve the issues raised in those grievances. As required by the grievance procedure, the second-step responses sufficiently addressed both the issues raised and relief requested.

⁶ Va. Code §§ 2.2-1001(5), 2.2-3003(G).

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