

Issue: Compliance – Grievance Procedure: Other Issue (grieving same management actions addressed in another grievance); Ruling Date: August 7, 2007; Ruling #2008-1748; Agency: Department of Motor Vehicles; Outcome: Grievant Not In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF THE DIRECTOR

In the matter of Department of Motor Vehicles
No. 2008-1748
August 7, 2007

The grievant has requested a ruling on whether his June 29, 2007 grievance with the Department of Motor Vehicles (the agency) is in compliance with the grievance procedure. The agency asserts that the grievance involves the same management action challenged by another grievance. For the reasons set forth below, this Department determines that the grievance does not comply with the grievance procedure and may be administratively closed.

FACTS

On October 4, 2006, the grievant received a Group II Written Notice for failure to follow agency policy.¹ The agency disciplined the grievant for his conduct in placing a hold on a customer's account, refusing to lift that hold, and refusing to meet the customer in the presence of that customer's attorney.² The grievant challenged the disciplinary action in a grievance dated November 1, 2006.³ After an administrative hearing on that grievance, a hearing officer reduced the disciplinary action to a Group I Written Notice for unsatisfactory performance.⁴ The agency, pursuant to the hearing officer's decision, reissued the Written Notice as a Group I infraction for unsatisfactory performance on June 4, 2007. On June 29, 2007, the grievant initiated a new grievance to challenge the reissued Written Notice. The grievant now seeks a ruling from this Department following administrative closure of the June 29, 2007 grievance by the agency for noncompliance with the grievance procedure's initiation provisions.

DISCUSSION

The grievance procedure provides that a grievance must not challenge the same management action challenged by another grievance.⁵ If this requirement is not met, the agency

¹ Decision of Hearing Officer, Case No. 8529, April 23, 2007 ("Hearing Decision"), at 1.

² *See id.* at 3.

³ *Id.* at 1.

⁴ *Id.* at 6.

⁵ *Grievance Procedure Manual* § 2.4.

may administratively close the grievance for noncompliance.⁶ The grievant then has the right to request a compliance ruling from the EDR Director to overturn the closing of the grievance,⁷ as the grievant has done in this case.

In his June 29, 2007 grievance, the grievant has challenged a Written Notice that was reissued by the agency to comply with a ruling from a grievance hearing. Therefore, the grievant is essentially challenging the same management action addressed in the hearing. The grievant already grieved the conduct that was the subject of the Group II Written Notice in the November 1, 2006 grievance. The grievant was afforded the opportunity to be heard at hearing about the hold he placed on the customer's account and his refusal to meet the customer with his attorney present.⁸ Though the hearing officer found the grievant's conduct was not a Group II violation, he determined that the conduct amounted to unsatisfactory performance, a Group I offense.⁹ The reissued Written Notice clearly concerns the exact conduct as that raised in the November 1, 2006 grievance and in the original Group II Written Notice. Consequently, the June 29, 2007 grievance challenges the same management action, i.e., the discipline the grievant received for the incident with the customer, as that alleged in the November 1, 2006 grievance.

CONCLUSION

For the reasons discussed above, this Department has determined that the grievance initiated on June 29, 2007 is noncompliant with Section 2.4 of the *Grievance Procedure Manual* because it challenges the same management action as addressed in another grievance. The parties are advised that the grievance should be marked as concluded due to noncompliance and no further action is required. This Department's rulings on matters of compliance are final and nonappealable.¹⁰

Claudia T. Farr
Director

⁶ *Id.*

⁷ *Id.*

⁸ See Hearing Decision at 2-6.

⁹ To the extent the grievant might be arguing the propriety of the hearing officer's decision, either legally or under the grievance procedure, to reduce the original Written Notice to a Group I Written Notice for unsatisfactory performance, those issues should have been raised by requesting administrative review of the hearing decision from this Department or appealing to the circuit court. See *Grievance Procedure Manual* §§ 7.2 – 7.3. The grievant did not timely request an administrative review from this Department and if he has not already done so, his time to appeal to the circuit court has long passed. *Id.*

¹⁰ Va. Code § 2.2-1001(5).