

Issue: Compliance – Grievance Procedure: Resolution Steps; Ruling Date:  
September 20, 2007; Ruling #2008-1802; Agency: Department of Corrections;  
Outcome: Agency In Compliance.



*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*

**COMPLIANCE RULING OF DIRECTOR**

In the matter of Department of Corrections  
Ruling Number 2008-1802  
September 20, 2007

The grievant has requested a compliance ruling regarding her June 19, 2007 grievance with the Department of Corrections (the agency). The grievant claims that the agency has violated a substantial requirement of the grievance procedure by failing to adequately address the issues raised by her grievance in the third step written response.

FACTS

On June 19, 2007, the grievant initiated a grievance to challenge her transfer to the mail room after being placed under investigation by the agency. The grievant asserts general issues of misapplication of policy, unfair treatment and practices, workplace harassment, retaliation, and violations of due process. As relief, the grievant has requested 1) return to her original position (or a higher position with an increase in salary), 2) an end to the alleged improper acts (harassment, retaliation, etc.), 3) a new supervisor, 4) the results of an investigation related to her conduct and the name of the individual who initiated it, and 5) an investigation of her supervisor regarding the treatment of staff. The grievant contends that the third step-respondent has failed to provide an adequate response to the issues raised by her grievance. By letter of August 24, 2007, the grievant notified the agency head of the alleged noncompliance. The agency received this letter on August 27, 2007. As more than five workdays have passed and the agency has not corrected this alleged noncompliance, the grievant requested a ruling from this Department on September 7, 2007.<sup>1</sup>

DISCUSSION

Under the grievance procedure, the third step-respondent must provide a written response within five workdays of receipt of the employee's grievance. The written response must address the issues and relief requested and should notify the employee of his or her procedural options.<sup>2</sup> While the third step-respondent is not required to respond to each and

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<sup>1</sup> EDR received the grievant's request on September 11, 2007.

<sup>2</sup> *Grievance Procedure Manual* § 3.3.

every point or factual assertion raised by the employee, the respondent must address each issue raised and the requested relief.

The grievant claims that the third step-respondent did not address the general issues of workplace harassment, retaliation, misapplication of policy, and violation of due process rights. However, the response does contain a statement that the agency “could not find sufficient evidence to support your allegations of misapplication of policy, unfair treatment and practices, violation of your due process, or workplace harassment and/or retaliation towards you.” While the third step-respondent addressed the grievant’s claims with extreme brevity, it cannot be said that the response to these general issues violates the requirements of the grievance procedure.<sup>3</sup> In addition, because the third step-respondent determined there was no evidence to support the grievant’s claims, there was no reason to discuss the grievant’s requested relief in detail. The grievant may disagree with the agency’s determinations, but that is not sufficient to find that the agency has failed to address the issues and the relief requested in the grievance.<sup>4</sup>

### CONCLUSION

For the reasons set forth above, this Department has determined that the agency has complied with the procedural requirements of the grievance procedure. The grievance may proceed past the third step-response. Thus, within five workdays of receipt of this ruling, the grievant must forward the grievance package to the agency head, with the appropriate box checked on her Form A, if she wishes to request qualification of the grievance for hearing.<sup>5</sup> If the grievant wishes to conclude her grievance, she must notify her agency’s human resource office in writing within five workdays of receipt of this ruling. 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> This ruling does not mean that if an agency simply states that there is no evidence to support a grievant’s claims it will be compliant with the grievance procedure in every case. Indeed, if a grievant could show, for instance, that an agency avoided considering clear evidence in support her claims, then the failure to address the compelling evidence in the response could be viewed as non-compliance. No evidence presented to EDR in this case supports such a finding.

<sup>4</sup> Additionally, it appears that the basis for the grievant’s transfer (the pending investigation) is now complete and will be considered by the warden of the facility to determine whether the grievant may return to her previous position or whether other action is necessary. Whatever action, or inaction, may be forthcoming from the warden will be a new event that the grievant might consider grieving, depending on the outcome.

<sup>5</sup> *Grievance Procedure Manual* § 3.3.

<sup>6</sup> *See* Va. Code § 2.2-1001(5).