

Issue: Compliance – Grievance Procedure (Other Issue – Hearing Officer Implementation); Ruling Date; February 6, 2008; Ruling #2008-1922; Agency: Department of Corrections; Outcome: Grievant Not In Compliance.



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of the Department of Corrections  
Ruling No. 2008-1922  
February 6, 2008

The grievant has requested a compliance ruling concerning her January 10, 2008 grievance with the Department of Corrections (the agency). For the reasons set forth below, this grievance does not comply with the grievance procedure and may be administratively closed.

FACTS

In 2006, the grievant initiated a grievance to challenge a demotion she received.<sup>1</sup> In a decision dated October 4, 2007, a hearing officer ordered, in part, the agency to “reinstatement the Grievant to a comparable position as either a Superintendent or an Assistant Warden, such that she will be in the same Pay Band as she was when she was involuntarily demoted.”<sup>2</sup> On January 9, 2008, the grievant was informed that she was reinstated to a Deputy Warden position. The grievant initiated this grievance to challenge the facility to which the grievant was assigned. She contends that her placement at the facility in question was retaliatory, causes her additional travel costs, and violates agency policy. The agency determined the grievance was out of compliance with the grievance procedure because it challenged the agency’s implementation of the hearing decision. The grievant appeals that determination to this Department.

DISCUSSION

In her grievance, the grievant has challenged the manner in which the agency implemented the relief ordered by the hearing officer in Case Number 8655. Under the grievance procedure, if a grievant believes that an agency has not properly implemented a hearing officer’s decision, she may petition the circuit court having jurisdiction in the locality in which the grievance arose for an order requiring implementation of the final hearing decision.<sup>3</sup> Because there is an independent procedure for implementation in the grievance procedure, a grievance may not be initiated for this purpose.<sup>4</sup>

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<sup>1</sup> Decision of Hearing Officer, Case No. 8655, Oct. 4, 2007, at 1.

<sup>2</sup> *Id.* at 11.

<sup>3</sup> Va. Code § 2.2-3006(D); *Grievance Procedure Manual* § 7.3(c).

<sup>4</sup> *See* EDR Ruling No. 2007-1429.

Accordingly, because the January 10, 2008 grievance challenges an alleged failure of the agency to implement the hearing officer's decision appropriately, it is not in compliance with the grievance procedure and may be administratively closed. It should be noted, however, that neither the filing of the January 10, 2008 grievance nor this ruling prevents the grievant from pursuing an order for implementation from the appropriate circuit court.<sup>5</sup>

In addition, because the grievant raises issues that might directly be raised in a circuit court, EDR will provide a copy of this ruling to the agency head. This will assure that the agency head receives notice of the implementation issues raised by the grievant, and may take steps, if he so desires, to ensure that the agency's implementation actions were appropriate.<sup>6</sup> This ruling in no way determines that the agency has failed to implement the hearing officer's decision or that its actions were otherwise inappropriate. This Department is simply ensuring that the agency head is aware of the issue so that – if appropriate – the grievant might receive relief from the agency in a timely manner rather than having to petition the circuit court for relief.

#### CONCLUSION

For the reasons set forth above, this Department concludes that the January 10, 2008 grievance was not in compliance with the grievance procedure and may be administratively closed. This Department's rulings on matters of compliance are final and nonappealable.<sup>7</sup>

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Claudia T. Farr  
Director

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<sup>5</sup> Va. Code § 2.2-3006(D); *Grievance Procedure Manual* § 7.3(c).

<sup>6</sup> Providing the agency head with notice of alleged noncompliance with the hearing decision is consistent with the party noncompliance provision of the grievance procedure, which also provides for notice of noncompliance to the agency head. *See Grievance Procedure Manual* § 6.3.

<sup>7</sup> Va. Code § 2.2-1001(5).