

Issue: Compliance – Grievance Procedure (Other Issue); Ruling Date: August 19, 2008; Ruling #2008-2057; 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. 2008-2057
August 19, 2008

The grievant has requested a compliance ruling in his June 12, 2008 grievance with the Department of Corrections (the agency). The agency closed the June 12th grievance on the basis that it was duplicative of a previous grievance. For the reasons set forth below, this grievance is non-compliant with the grievance procedure and may be closed by the agency.

FACTS

The grievant is a veteran of the Armed Forces of the United States. He served in the military from February 1978 through August 1983 when he was honorably discharged. At the time of his discharge, the grievant's rank was E-5 (Sergeant) and his duties included supervision of a telecommunications center where he supervised from four to nine employees at any given time. The grievant held a top secret security clearance while in the military.

The grievant began his employment with the agency in September 1990. Since that time, he has continued employment with the agency as a Corrections Officer at two different facilities. While serving at his most recent post, the grievant has acted as Officer-In-Charge on a regular basis.

On or about April 5, 2007, the grievant applied for a position with the agency as a Corrections Lieutenant at the facility where he works. On April 24, 2007 he was interviewed for that position by a Captain and a Major. The Major was acquainted with the grievant from having worked with him. The interview consisted of a standard set of questions which were asked of all candidates. A total of eight applicants were pre-screened and approved for an interview by the Superintendent of the facility. Six of the applicants held the rank of Sergeant, and only one other candidate was a Corrections Officer.

The Major made a finding that the grievant could be recommended for the Lieutenant position with reservations. He believed that the grievant, in his interview, showed a lack of knowledge of agency policies and of the Strategic Plan of the agency.

The Captain, on the other hand, made a finding that he could not recommend the grievant for the position. He believed that the grievant was unprepared for the interview and not knowledgeable regarding certain duties of the Lieutenant position. Accordingly, the grievant was not selected for the position.

The interviewers noted the military experience of the grievant on the evaluation forms prepared by them. At no time during the interview, however, did either of them ask additional questions of the grievant to investigate what experiences in his military background, if any, would be relevant to the position for which he was being evaluated.

The grievant initiated a grievance challenging his non-selection. The grievance advanced through the resolution steps and was qualified for hearing by this Department.¹ In a January 22, 2008 hearing decision, the hearing officer found that “the applicable statute and policy do require an agency to fully evaluate an applicant’s military service experience when that experience is brought to the attention of the agency.”² The hearing officer further found that “[t]he experiences of the grievant while in the military, to the extent that they are relevant to a consideration of the requirements of the Lieutenant’s position, were not considered at all.”³ The hearing officer concluded by ordering the agency “to apply the applicable law and policy by repeating the selection process for the subject position.”⁴

DISCUSSION

In this grievance, grievant asserts that “everyone makes mistakes in [the previous grievance.]” The grievant asserts that following the January 22nd hearing decision, the agency violated the state’s hiring policy by failing “to give preference to veterans as mandated by policy.” He concludes: “I pointed out policy and facts[;] that is why I won the panel hearing, but yet no satisfaction has been awarded to me.”

In essence, the grievant has challenged the manner in which the agency implemented the relief ordered by the hearing officer in Case Number 8761. Under the grievance procedure, if a grievant believes that an agency has not properly implemented a hearing officer’s decision, he 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.⁵ Because there is an independent procedure for implementation in the grievance procedure, a grievance may not be initiated for this purpose.⁶ Accordingly, because the June 12, 2008 grievance challenges an alleged failure of the agency to properly implement the hearing officer’s decision, it is not in compliance with the grievance procedure and may be administratively closed. It should be noted, however,

¹ EDR Ruling No. 2008-1793.

² Decision of Hearing Officer, Case No. 8761 issued January 22, 2008.

³ *Id.*

⁴ *Id. at 6.*

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

⁶ *See* EDR Ruling Nos. 2008-1922 and 2007-1429.

that neither the filing of the June 12, 2008 grievance nor this ruling prevents the grievant from pursuing an order for implementation from the appropriate circuit court.⁷

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.⁸ 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 June 12, 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.⁹

Claudia T. Farr
Director

⁷ Va. Code § 2.2-3006(D); *Grievance Procedure Manual* § 7.3(c).

⁸ 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.

⁹ Va. Code § 2.2-1001(5); 2.2-3003(G).