

Issue: Compliance – Grievance Procedure (Resolution Steps); Ruling Date: January 6, 2009; Ruling #2009-2190; Agency: Department of Motor Vehicles; Outcome: Agency In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF THE DIRECTOR

In the matter of Department of Motor Vehicles
Ruling No. 2009-2190
January 6, 2009

The grievant has requested a ruling on who is the appropriate first step-respondent in his grievance, dated October 30, 2008, with the Department of Motor Vehicles (the agency).

FACTS

The grievant states he submitted his grievance on October 30, 2008, to his division's Director.¹ The agency returned the grievance to the grievant on November 18, 2008, indicating that the grievant had presented the grievance to the wrong member of management and instructing him to give it to the "second level supervisor" for the first step response. The grievant, however, asserts that the agency's action was not compliant with the grievance procedure. He argues that he should be allowed to advance to his division's Director because of the allegations of retaliation. The grievant has requested this compliance ruling to determine the appropriate first step-respondent.

DISCUSSION

In a grievance, the first step-respondent is usually the employee's immediate supervisor.² However, Section 2.4 of the *Grievance Procedure Manual* provides that the grievant may initiate a grievance with the "next level supervisor," if the grievance is alleging discrimination or retaliation by the immediate supervisor. It appears that the grievant has asserted that his immediate supervisor may have engaged in retaliation. Therefore, the grievant would have the option to initiate his grievance with the "next level supervisor," i.e., his supervisor's supervisor. In this case, the agency has referred the grievant to initiate his grievance with his "second level supervisor," which appears to be the appropriate first step-respondent in this case.³ Section 2.4

¹ In the grievant's notice of noncompliance, the grievant also indicates that he mailed this grievance to the agency on November 7, 2008. For purposes of this ruling, the particular date the grievant initiated this grievance is not determinative.

² *Grievance Procedure Manual* § 2.4.

³ The grievant argues that the individual identified by the agency as the "second level supervisor" had traditionally been his immediate supervisor in the past. However, it appears that, as reflected on the grievant's performance evaluation, the grievant's immediate supervisor is not the "second level supervisor." Rather, the immediate supervisor reports to the "second level supervisor," the reviewer on the grievant's performance evaluation.

of the *Grievance Procedure Manual* does not permit the grievant to skip the first step entirely and proceed to the second step-respondent.⁴ The grievance only proceeds to the supervisor's supervisor for the first step of the grievance process in cases such as this.⁵

Therefore, if the grievant wishes to proceed with this grievance, he must return the grievance package to the "second level supervisor" (his supervisor's supervisor). The grievance would then proceed from that point with that supervisor acting as the first step-respondent.

This Department's rulings on matters of compliance are final and nonappealable.⁶

Claudia T. Farr
Director

Therefore, at least for purposes of this grievance, the "second level supervisor" identified by the agency appears to be the "next level supervisor" above the grievant's immediate supervisor.

⁴ In some cases, an employee's supervisor's supervisor may be the same individual as the second step-respondent. In that case, the first step would generally be skipped altogether. *See* Grievance FAQs, No. 12, at <http://www.edr.virginia.gov/faqs.htm>.

⁵ *Grievance Procedure Manual* § 2.4; *see also* Grievance FAQs, No. 11. Further, it must be noted that while the grievant asserts that the "second level supervisor" is also allegedly a part of the retaliation, the *Grievance Procedure Manual* only grants a grievant the option of proceeding to the "next level supervisor," regardless of whether that individual might also be a participant in the alleged retaliatory conduct. Parties to a grievance might agree to alter the process further and allow the grievance to be initiated at a higher level. However, it does not appear that both parties have agreed to beginning at the level chosen by the grievant in this case.

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