

Issue: Compliance – Access to the Grievance Procedure; Ruling Date: February 19, 2009; Ruling #2009-2225; Agency: Department of Corrections; Outcome: No Ruling (premature).



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of the Department of Corrections  
Ruling No. 2009-2225  
February 19, 2009

By letter dated January 29, 2009, and a subsequent clarification of that letter, the agency states that the grievant has requested a compliance ruling involving the issue of her access to the grievance procedure when she initiated her grievance on December 4, 2008.<sup>1</sup> For the reasons set forth below, this Department concludes that the ruling request is premature.

FACTS

In her December 4, 2008 grievance, the grievant is challenging her 2007 performance evaluation. The grievant initially received this performance evaluation on or around October 31, 2007. However, the grievant was separated from employment on November 6, 2007, before the 30-calendar day period had expired for challenging her October 31, 2007 performance evaluation through the grievance procedure, and before she had initiated such a grievance. She grieved her November 6, 2007 separation and was reinstated by the hearing officer in a November 11, 2008 hearing decision,<sup>2</sup> after which she initiated this new grievance.

The first step-respondent responded to the December 4, 2008 grievance by indicating that it was “out of compliance” because the grievant was not an employee when she initiated the grievance. The grievant appealed that determination to the agency head and, apparently, has not received any response. The agency forwarded the grievance package to this Department, indicating that the grievant requested a ruling regarding compliance with the grievance process.

DISCUSSION

The *Grievance Procedure Manual* provides that an employee “[m]ust have been employed by the Commonwealth at the time the grievance is initiated.”<sup>3</sup> If agency management denies access to the grievance procedure on this basis, which is apparently the case here, the employee’s next step is to request that the agency head grant the employee access.<sup>4</sup> The grievant

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<sup>1</sup> Although the agency stated in its January 29, 2009 letter that the grievant was seeking qualification of her grievance for a hearing, the agency later clarified to this Department that the grievant intended to request a *compliance* ruling.

<sup>2</sup> See Decision of Hearing Officer, Case No. 8936, Nov. 11, 2008.

<sup>3</sup> *Grievance Procedure Manual* § 2.3.

<sup>4</sup> *Id.*

pursued such an appeal to the agency head but has not yet received a response. An employee can appeal the agency head's decision denying access to EDR, but only, obviously, after such a denial is received. Because the agency head has not yet ruled upon the grievant's request for access, a ruling on this issue is premature at this time.<sup>5</sup>

Although the grievance procedure does not provide a specific timeframe within which the agency head must make such an access determination,<sup>6</sup> the general guideline for such decisions throughout the grievance procedure is five workdays. Consequently, the agency head, or his suitable designee, is required to respond to the grievant's access request within five workdays of the agency's receipt of this ruling, if he has not done so already.

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> It should be noted that the agency has indicated to this Department that the agency will issue such an access determination and, therefore, EDR need not issue this ruling. However, this ruling request was initially characterized as the grievant's ruling request, so it would not be for the agency to withdraw. Therefore, this Department was compelled to proceed with this ruling.

<sup>6</sup> See *Grievance Procedure Manual* § 2.3.

<sup>7</sup> See Va. Code § 2.2-1001(5), 2.2-3003(G).