

Issue: Compliance – Grievance Procedure (Other Issue); Ruling Date: June 25, 2009; Ruling #2009-2317; Agency: Department of Corrections; Outcome: In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of Corrections
Ruling No. 2009-2317
June 25, 2009

The Department of Corrections (DOC or the agency) seeks to close the grievant's January 29, 2009 grievance because the grievant has died. For the reasons set forth below, the agency's request cannot be granted at this time. Further instruction regarding this grievance is provided in this ruling.

FACTS

The grievant initiated his January 29, 2009 grievance¹ to challenge a Written Notice he received and his termination. The second step-respondent provided a response dated February 18, 2009. Because the grievant did not return the grievance paperwork to the agency to proceed to the next step of the grievance process, the agency sent the grievant a noncompliance letter on April 7, 2009. The agency was later notified that the grievant had died. The agency now requests this ruling to close the grievance.

DISCUSSION

The grievance procedure does not address the impact of a grievant's death on his existing grievance, and this Department is unaware of any court decision or administrative ruling that addresses the issue. However, an employee with access to the grievance procedure has an interest in continued employment absent just cause for removal.² Further, if that employee is terminated and grieves his termination, and if he is reinstated by a hearing officer or a reviewing court, that employee may be entitled to full or partial back pay and benefits from the date of his dismissal to the date of reinstatement.³ Because monetary relief might be available if the grievant prevailed in his grievance, his estate or next of kin should be entitled to pursue any such relief (for

¹ The actual date of initiation is not at issue in this ruling. It appears there may have been two different Grievance Form A's submitted at different times, the latter, dated January 29, 2009, on an Expedited Process form. For ease of reference, the January 29, 2009 date will be used to refer to the grievance addressed in this ruling.

² See *Detweiler v. Dep't of Rehab. Servs.*, 705 F.2d 557, 560 (4th Cir. 1983).

³ Va. Code §2.2-3005.1(A). An order for reinstatement may also impact entitlements to other benefits such as, for instance, life insurance proceeds.

example, back pay and benefits from the date of termination to the date of his death) as a successor in interest.⁴

A copy of this ruling is being sent to the grievant's known next of kin to provide notice of these issues. If the grievant's next of kin or other representative wishes to continue this grievance as a successor in interest, he or she must notify the DOC in writing of the individual who will serve in that role, as a substitute for the grievant, **within 30 calendar days of the date of this ruling.**⁵ Such individual must have the appropriate authority to represent and pursue the grievant's interests. If the agency objects to the substitution on any grounds, the agency can pursue that issue through the noncompliance provisions of the grievance procedure.⁶ Alternatively, if the grievant's representative does not wish to pursue this grievance, the agency should be notified.

If a representative is not substituted for the grievant within 30 calendar days of the date of this ruling, and no extension is granted, the agency may administratively close the grievance without any further action on its part. The grievance may be reopened only upon a timely showing by the grievant of just cause for the delay.

If either party has any questions regarding the grievance procedure, they may contact EDR's toll-free AdviceLine at 1-888-232-3842. This Department's rulings on matters of compliance are final and nonappealable.⁷

Claudia T. Farr
Director

⁴ In cases at law, in the event of a party's death, a successor in interest can be substituted for the party by motion. Sup. Ct. of Va. R. 3:17. The federal Merit Systems Protection Board also allows for the substitution of a successor in interest to an employee who dies after filing a matter with the Board, when the interests of the employee do not terminate upon his death. 5 C.F.R. § 1201.35. Such an approach appears just and appropriate in state grievance matters such as this as well.

⁵ If the grievant's representatives need additional time to appoint the appropriate individual with proper authority, a request for an extension should be made to the agency first. If denied, the representatives may raise these issues to EDR for a ruling. An extension will only be available for just cause.

⁶ See *Grievance Procedure Manual* § 6.3.

⁷ See Va. Code § 2.2-1001(5), 2.2-3003(G).