

Issue: Compliance – Grievance Procedure (Resolution Steps); Ruling Date: November 15, 2010; Ruling No. 2011-2790; Agency: Department of Motor Vehicles; Outcome: Agency In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Motor Vehicles
Ruling No. 2011-2790
November 15, 2010

The grievant has asked for a compliance ruling from this Department. She alleges that the Department of Motor Vehicles (DMV or the agency) has failed to comply with the grievance procedure by refusing to have the correct employee act as the first-step respondent. For the reasons set forth below, we find that the agency acted in compliance with the grievance procedure.

FACTS

On or about August 25, 2010, the grievant initiated a grievance challenging her receipt of a Group II Written Notice with demotion and transfer. The grievant initially gave the grievance to her manager. The manager returned the grievance to the grievant with a letter dated August 26, 2010 indicating that the grievant needed to submit her grievance either to her current immediate supervisor, Mr. D, or to Ms. B, the person who issued the written notice. Thereafter, the grievant gave her grievance to Mr. D. Mr. D responded to grievance as the first step-respondent on or about September 2, 2010. The grievant asserts that Mr. D should not have responded as the first step-respondent and that he should have forwarded the grievance to Ms. B since she was the person responsible for issuing the discipline. As a result, the grievant notified the agency of its alleged noncompliance and now seeks a compliance ruling from this Department.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.¹ That process assures that the parties first communicate with each other about the purported noncompliance, and resolve any compliance problems voluntarily without EDR's involvement. Specifically, the party claiming noncompliance must notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance. If the party fails to correct the alleged noncompliance, the other party may request a ruling from EDR. Should EDR find that the agency violated a substantial procedural requirement, EDR may render a

¹ See *Grievance Procedure Manual* § 6.3.

decision against the noncomplying party on any qualifiable issue, unless the noncomplying party can establish just cause for its noncompliance; rendering such a decision is reserved for the most egregious of circumstances. For instance, if a party ignores a previous compliance order from EDR, a ruling in favor of the opposing party may be granted.

Under the grievance procedure, each agency must designate individuals to serve as respondents in the resolution steps. A list of these individuals shall be maintained by the agency's Human Resources Office and is also available on EDR's website. Each designated step respondent shall have the authority to provide the grievant with a remedy, subject to the agency head's approval.² Pursuant to its statutory responsibilities, EDR has long collected and maintained each agency's designated step respondents. This assures that each agency's management resolution step respondents are appropriate, are known to employees and to EDR, and that this phase of the grievance process is administered consistently and fairly.³

The agency has designated the employee's immediate supervisor as the first-step respondent. Although the person designated as the first-step respondent generally must act in that capacity, there are exceptions to this general rule. In particular, the grievance procedure provides that an employee may initiate his or her grievance with the manager who issued the discipline being grieved.⁴ The manager with whom the grievance was initiated then acts as the first-step respondent, even if that manager is not the grievant's immediate supervisor.

Based on the foregoing, in this case, the grievant could have initiated her grievance either with Mr. D, her immediate supervisor, or Ms. B, the person who issued the written notice. The grievant admits that she initiated her grievance with Mr. D but states she only did so because she was running out of time to file the grievance and she could not give the grievance to Ms. B herself because Ms. B had recently been transferred to a location unknown to the grievant. The grievant also claims that when she gave her grievance to Mr. D, she "believes" she verbally indicated her desire to have Mr. D forward the grievance to Ms. B. During this Department's investigation, Mr. D stated that the grievant simply handed the grievance to him and did not ask him to forward the grievance to Ms. B.

² See Va. Code § 2.2-3003(D).

³ An agency's careful designation of step respondents, and consistent adherence to those designations, is crucial to an effective grievance process. Step respondents have an important statutory responsibility to fulfill and should decline to serve only in extenuating circumstances, such as extended illness or serious injury. Further, if a step respondent cannot serve in that capacity pending a particular grievance, management should seek an agreement with the grievant on a substituted step respondent and should put any agreement in writing.

⁴ *Grievance Procedure Manual* § 2.4

This Department concludes that as the grievant's immediate supervisor and the designated first-step respondent, Mr. D appropriately responded to the grievance.⁵ The grievant has failed to demonstrate that she invoked her right to initiate the grievance with the individual who issued the discipline. As such, this Department cannot conclude that agency was out of compliance with the grievance process when Mr. D responded to the grievance as the first step-respondent instead of Ms. B. Accordingly, within **5 workdays of her receipt of this ruling**, the grievant is ordered to either advance her grievance to the designated second step-respondent or conclude her grievance and return it to her human resources office. This Department's rulings on matters of compliance are final and nonappealable.⁶

Claudia T. Farr
Director

⁵ While we recognize that it may be difficult for a first-step respondent to respond where he or she has not taken the action being grieved, the burden imposed by the grievance procedure under this particular circumstance is not an onerous one. The grievance procedure does not require the first step respondent to act as a full-fledged investigator before providing a response, and the first-step response need not be in-depth or extensive. In the absence of having first hand knowledge of the issuance of the Written Notice, the first step respondent is required, under the grievance procedure, to familiarize himself with the basic facts and circumstances surrounding the events giving rise to the grievance, such that he could provide a reasoned response.

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