

Issue: Compliance – Grievance Procedure (other issue); Ruling Date: March 21, 2017; Ruling No. 2017-4506; Agency: Department of Alcoholic Beverage Control; Outcome: Agency in Compliance.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Employment Dispute Resolution¹

COMPLIANCE RULING

In the matter of the Department of Alcoholic Beverage Control
Ruling Number 2017-4506
March 21, 2017

The Department of Alcoholic Beverage Control (the “agency”) has requested a compliance ruling regarding the grievant’s January 20, 2017 dismissal grievance initiated with the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”). The agency asserts that the grievant has been provided with all of the relief requested in her grievance and thus, the grievance should be considered moot and administratively closed.

FACTS

On January 20, 2017, the grievant initiated a grievance with EDR, challenging a Group III Written Notice and accompanying termination issued to her on December 23, 2016. The grievant requested as relief to return to employment with the agency. Prior to the appointment of a hearing officer for this matter, the agency rescinded the Group III Written Notice with termination and returned the grievant to pre-disciplinary leave with pay status. The agency also restored the grievant’s benefits and provided her with back pay for the time she had been out of work. Accordingly, the agency now requests a ruling from EDR that the grievance be closed as it indicates that the issues presented in the grievance have been resolved.

DISCUSSION

If a Grievance Form A does not comply with the requirements for initiating a grievance, the agency may notify the employee, using the Grievance Form A, that the grievance will be administratively closed.² Because dismissal grievances are initiated directly with EDR, an agency is essentially unable to follow this process as outlined. Accordingly, the agency requests a ruling from this Office that it may administratively close this grievance.

In this case, the agency has rescinded the Group III Written Notice, returned the grievant to pre-disciplinary leave with pay status, and provided her with back pay. As a result, no

¹ Effective January 1, 2017, the Office of Employment Dispute Resolution merged with another office area within the Department of Human Resource Management, the Office of Equal Employment Services. Because full updates have not yet been made to the *Grievance Procedure Manual*, this office will be referred to as “EDR” in this ruling to alleviate any confusion. EDR’s role with regard to the grievance procedure remains the same post-merger.

² *Grievance Procedure Manual* § 6.2.

termination exists to be challenged through the dismissal grievance process.³ Proceeding directly to a hearing would not be in compliance with the grievance procedure in such a matter as the grievant no longer has access to the dismissal grievance process.⁴ Further, a hearing officer would be unable to provide the grievant with any additional relief beyond that which has already been granted to her by the agency.

The grievant provided information to EDR that she does not wish to withdraw the dismissal grievance because, during a period of time prior to her termination she was on leave without pay, and subsequently incurred additional costs for health insurance as well as exhausted her leave balances. The agency confirms that the grievant's leave without pay status existed from April 29, 2016 through July 27, 2016, well before her termination on December 23, 2016. Any challenge to the agency's actions during that period of time would no longer be timely. Accordingly, because the dismissal no longer exists, it would be improper for this dismissal grievance to proceed to a hearing. Should the grievant have continuing issues to contest, those can be challenged in a new grievance upon the grievant's return to work. While there is no basis for EDR to find noncompliance on the part of either party, this grievance will not proceed further and it is, therefore, administratively closed.

EDR's rulings on matters of compliance are final and nonappealable.⁵



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Director
Office of Employment Dispute Resolution

³ See Va. Code § 2.2-3003(A); *Grievance Procedure Manual* § 2.5.

⁴ See *id.*

⁵ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).