

Issue: Compliance – Grievance Procedure (other issue); Ruling Date: March 22, 2017; Ruling No. 2017-4518; Agency: Department of Veterans Services; 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 Veterans Services
Ruling Number 2017-4518
March 22, 2017

The grievant has requested a compliance ruling regarding her January 30, 2017 grievance with the Department of Veterans Services (the “agency”). The agency asserts that, based upon the grievant’s notation on the Grievance Form A, the grievant concluded the grievance. For the reasons discussed below, the grievance will not be permitted to proceed.

FACTS

The grievant received the first step-respondent’s response in this grievance on February 6, 2017. She returned the Grievance Form A to the agency, checking the box that indicated she was concluding her grievance. Consequently, the agency processed the grievance as closed. After about three weeks, the grievant contacted the human resources office to inquire about the status of her grievance. The grievant was informed that she had marked her grievance concluded when she returned it to the agency. The grievant said she must have checked the wrong box in error, and requested that the grievance be allowed to proceed. The next day, the grievant sent a notice of noncompliance to the agency head, again requesting that her grievance be allowed to proceed. On March 7, 2017, the agency denied the grievant her request to proceed with and/or re-open her grievance. The grievant has appealed the agency’s determination.

DISCUSSION

EDR recognizes that the Grievance Form A is an official grievance document used by the parties to communicate throughout the grievance process and as such, is of paramount importance during the grievance procedure. Because the grievant, agencies, and EDR rely on the Form A to ascertain the intent of the parties, it is incumbent on the parties to clearly and accurately express their intentions on the Grievance Form A. However, in past rulings, EDR has considered a party’s claim of inadvertent error made on the Grievance Form A in different contexts and in so doing has generally recognized that evidence of a party’s original intent is relevant.² This case presents another such situation.

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 See EDR Ruling No. 2016-4239; EDR Ruling No. 2011-3014; EDR Ruling No. 2011-2970.

Without question, the grievant checked the box that stated “I conclude my grievance and am returning it to the Human Resources Office” before delivering the Grievance Form A back to the agency. Quite reasonably, the agency then closed the grievance based on the grievant’s apparent intention. However, the grievant asserts that when she submitted her paperwork to the Human Resource office, she stated to a member of the Human Resources staff that she was intending to proceed with her grievance. The grievant’s position is that she simply made a mistake in checking the wrong box. The agency disputes that the grievant advised that she wanted to proceed. The member of the agency’s Human Resources staff who received the grievance form from the grievant states that the grievant only said she wished to turn in her grievance paperwork and did so.

In assessing the totality of the circumstances, it is unclear whether the grievance documentation submitted to the Human Resource Office would support the contention that when the grievant checked the box to conclude her grievance she did not intend to actually conclude her grievance. However, it appears that since the time of the initiation of this grievance, the subject of the grievance has evolved such that EDR need not make findings on this issue. The original certification provided by the grievant’s health care provider regarding her ability to perform the essential functions of the job has been clarified by letter dated February 22, 2017. The first step-respondent did not have this information at her disposal when she replied to the grievance on February 1, 2017. The grievant may have attempted to provide this information to the agency in her contact of March 7, 2017, but was advised that her grievance was considered closed at that time. The grievant’s position as of March 7, 2017, appears to be that she can and wishes to return to work. As of March 7, 2017, the agency has declined to grant this relief. This new determination has resulted in an evolution of the situation from what was originally grieved such that the January 30, 2017 grievance would not be able to properly address the active claims at issue. Thus, should the grievant wish to challenge an alleged failure to return her to work, either with or without accommodations, she may initiate a new grievance within 30 calendar days from March 7, 2017.

EDR has no basis to find noncompliance on the part of the agency, and the grievance of January 30 will remain administratively closed. To continue through the grievance procedure with her claims under the Family and Medical Leave Act and/or other associated issues and accommodations, the grievant must file a new grievance to address the new matters as they now exist. The deadline to file such a grievance would appear to be within 30 calendar days of March 7, 2017, meaning the deadline is April 6, 2017.

EDR’s rulings on matters of compliance are final and nonappealable.³



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³ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).