

Issue: Compliance – Separation from State (unable to meet work conditions); Ruling
Date: May 7, 2018; Ruling No. 2018-4715; Agency: George Mason University;
Outcome: Grievant Not in Compliance.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Equal Employment and Dispute Resolution

COMPLIANCE RULING

In the matter of George Mason University
Ruling Number 2018-4715
May 7, 2018

George Mason University (the “University”) seeks a compliance ruling concerning the grievant’s April 22, 2018 grievance.

On April 22, 2018, the grievant initiated a grievance directly with the Office of Equal Employment and Dispute Resolution (“EEDR”), utilizing the Dismissal Grievance Form A to challenge his separation from employment. In its response, the University indicates that the grievant’s separation from employment does not constitute a “dismissal” under the provisions of the *Grievance Procedure Manual*. Ordinarily, 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.¹ Because dismissal grievances are initiated directly with EEDR,² an agency is essentially unable to follow this process as outlined.

The *Grievance Procedure Manual* defines “dismissals” as terminations due to formal discipline or unsatisfactory job performance.³ In this instance, the grievant was removed due to circumstances preventing him from performing his job, specifically, a failure to report to work or contact his supervisor regarding his absence. We agree with the University that the grievant’s separation from employment does not constitute a “dismissal” as defined by the *Grievance Procedure Manual*, and accordingly, this grievance is not eligible for the dismissal grievance process. The grievant may, however, challenge his separation through the ordinary or expedited grievance process as he would any other management action or omission.

Consistent with this analysis, this ruling will also address the timeliness of the grievance to challenge the grievant’s separation from employment. EEDR has consistently held that a grievance initiated in a timely manner but with the wrong management representative will not bar a grievance for noncompliance.⁴ Rather, the remedy in such a situation is either for management to provide the grievance paperwork to the appropriate step-respondent or return the grievance to the grievant for submission to that step-respondent. In either case, for purposes of timeliness, the initiation date of the grievance will be considered the date it was submitted

¹ *Grievance Procedure Manual* § 2.4.

² *Id.* § 2.5.

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

⁴ *E.g.*, EDR Ruling No. 2011-2692; EDR Ruling No. 2007-1686; EDR Ruling No. 2001-195.

initially. EEDR views using the wrong grievance form or attempting to use the dismissal grievance process where there is not a right to do so as noncompliance of a similar nature that should be remedied in the same manner. Thus, the grievant is directed to resubmit his grievance on a Grievance Form A – Expedited Process to the University **within five workdays of receipt of this ruling**. Once received, the University must proceed with the management steps of the grievance procedure.⁵ There is not a basis to close this grievance for noncompliance as it was simply directed to the wrong location.

EEDR's rulings on matters of compliance are final and nonappealable.⁶



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Office of Equal Employment and Dispute Resolution

⁵ If a grievant were to refuse or dispute who the appropriate step-respondent should be, either party could request a compliance ruling from EEDR following written notice of noncompliance to the opposing side. *Grievance Procedure Manual* § 6.3.

⁶ See Va. Code §§ 2.2-1202.1(5); 2.2-3003(G).