

Issue: Compliance – Grievance Procedure (other issue); Ruling Date: May 31, 2018;
Ruling No. 2018-4725; Agency Department of Corrections; Outcome: Grievant in
Compliance.



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

COMPLIANCE RULING

In the matter of the Department of Corrections
Ruling Number 2018-4725
May 31, 2018

The Department of Corrections (the “agency”) seeks a ruling concerning the grievant’s May 4, 2018 dismissal grievance.¹

FACTS

On May 4, 2018, the grievant initiated a grievance directly with the Office of Equal Employment and Dispute Resolution (“EEDR”) to challenge her May 3, 2018 separation from employment pursuant to a Group III Written Notice. The agency argues that the grievance raises issues that have already been grieved and concluded, and accordingly, seeks a compliance ruling.

DISCUSSION

The *Grievance Procedure Manual* states that a grievance may not “challeng[e] the same management action or omission challenged by another grievance.”² The agency asserts that the May 4, 2018 grievance challenges the same issues that were raised and addressed in several prior grievances which have been concluded. In response, the grievant argues that she should be able to address the issue of retaliation at the hearing, as she argues that it “is the root of the dismissal.” EEDR recognizes that this particular matter has an extensive history, which the grievant asserts began in 2011 and has now culminated in her separation from employment. As the May 3, 2018 Group III Written Notice, with termination, does constitute a new adverse employment action against the grievant, EEDR concludes that the May 4 grievance is not duplicative of any prior grievance.

However, based on a review of the dismissal grievance, EEDR finds that the grievant’s claims regarding retaliation are most appropriately considered as a theory³ advanced in support of her challenge to the Written Notice itself. While the grievant may raise the issue of retaliation at the hearing to support her position regarding the Group III Written Notice and termination,⁴ EEDR cautions that she may not re-litigate issues in prior grievances that have already been adjudicated and/or otherwise concluded. At the hearing, the agency will have the burden of

¹ The grievance at issue in this matter appears to have been signed and dated on May 3, 2018; however, it was not initiated with EEDR until May 4, 2018.

² *Grievance Procedure Manual* § 2.4.

³ As EEDR has ruled, the “claims” or “issues” raised by a grievance are the management actions being challenged. *See, e.g.*, EDR Ruling Nos. 2013-3480, 2013-3495; EDR Ruling Nos. 2007-1561, 2007-1587.

⁴ *See* EDR Ruling No. 2011-2796.

proof to show that the Written Notice and termination were warranted and appropriate under the circumstances, and the grievant will have the burden of proof to show retaliation.⁵

Accordingly, the May 4, 2018 grievance may proceed forward as described above. Any specific issues previously raised in earlier grievances may only be discussed as background information, if relevant to any other claims that proceed in this grievance. The agency is directed to submit a completed Form B to EEDR within five workdays of receipt of this ruling, to the extent it has not already done so.

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



Christopher M. Grab
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Office of Equal Employment and Dispute Resolution

⁵ *Rules for Conducting Grievance Hearings* § VI(C).

⁶ Va. Code § 2.2-1202.1(5).