

Issue: Compliance – Grievance Procedure (other issue); Ruling Date: August 16, 2017; Ruling No. 2018-4600; Agency: Department of Corrections; Outcome: Grievant Not in Compliance.



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

COMPLIANCE RULING

In the matter of the Department of Corrections
Ruling Number 2018-4600
August 16, 2017

The grievant has requested a ruling from the Office of Equal Employment and Dispute Resolution (“EEDR”) at the Department of Human Resource Management (“DHRM”) on whether her July 28, 2017 grievance with the Department of Corrections (the “agency”) is in compliance with the grievance procedure.

FACTS

On or about June 28, 2017, the grievant was notified that she would be transferred to a different agency facility in another part of the state, effective July 25. The grievant filed a grievance on July 12, alleging that the transfer was “involuntary” and would require her to relocate, thus “negatively impacting [her] benefits” and resulting in a “family income reduction” The grievant further asserted that the transfer was a “[m]isapplication or [m]isuse” of agency policy, and requested as relief “[t]o remain at [her] current position and location” The July 12 grievance is currently proceeding through the management resolution steps.

After she had received the first step response to the July 12, 2017 grievance and the effective date of the transfer had passed,² the grievant initiated a second grievance on July 28. In the July 28 grievance, the grievant reiterates her objections to the relocation associated with the transfer, asserts that the “transfer is the result of retaliation and harassment” based on her previous use of the grievance procedure, and cites, as an example of similar behavior, a Counseling Memorandum she received for unrelated issues in 2016.³ The grievant further claims the transfer is an act of informal disciplinary action and is otherwise inconsistent with policy and/or law. Upon receiving the July 28 grievance, the agency notified the grievant that it would be administratively closed because it was duplicative of the July 12 grievance and, thus, did not

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. The *Grievance Procedure Manual* has now been updated to reflect this Office’s name post-merger as the Office of Equal Employment and Dispute Resolution.

² It is unclear from the grievance record whether the transfer has actually been implemented at this time.

³ The grievant filed a grievance to challenge the Counseling Memorandum at the time it was issued, and thus it cannot now be challenged again in the July 28 grievance. See EDR Ruling No. 2017-4474; *Grievance Procedure Manual* § 2.4. In addition, the grievant received the Counseling Memorandum well outside the thirty calendar-day period preceding the July 28 grievance, see *Grievance Procedure Manual* § 2.2, although it could be relevant as background evidence to support her claims of retaliation and harassment articulated in the July 28 grievance.

comply with the initiation requirements of the grievance procedure.⁴ The grievant now appeals that determination to EEDR and seeks to re-open the July 28 grievance.

DISCUSSION

The agency asserts that the July 28 grievance challenges the same management action as the July 12 grievance: the grievant's transfer to a different facility. Section 2.4 of the *Grievance Procedure Manual* states that a grievance may not "challeng[e] the same management action or omission challenged by another grievance."

EEDR has reviewed the two grievances and finds that they do not challenge separate and distinct management actions. Rather, it would appear that the central issue in both grievances is the same: the agency's decision to transfer the grievant to a different facility. In both grievances, the grievant seeks "[t]o remain at [her] current position and location" She does not allege that any other management action occurred between the filing of the July 12 and July 28 grievances, other than the effective date of the transfer, and EEDR has reviewed nothing to suggest that July 28 grievance is intended to challenge any management action other than the transfer. The July 28 grievance appears instead to merely incorporate additional theories and arguments as to why the grievant believes the transfer itself was improper.

While a grievance cannot be amended to include "challenges to additional management actions or omissions" after it has been initiated,⁵ a grievant may argue alternative theories as to why the challenged management actions or omissions were improper. The July 28 grievance contains additional theories as to why the agency's action was improper, and also appears to present new information in support of the grievant's theory that the agency misapplied and/or unfairly applied policy. The grievant may present any arguments articulated in July 28 grievance going forward in the July 12 grievance if she so desires. The July 28 grievance does not, however, challenge a new management action or omission, but merely presents new arguments relating to issues that have already been challenged in the July 12 grievance. Accordingly, the July 28 grievance is duplicative of another grievance and may be administratively closed.

CONCLUSION

For the reasons set forth above, the grievant's July 28, 2017 grievance will remain closed. The parties are advised that the grievance should be marked as concluded due to initiation noncompliance and no further action is required. EEDR's rulings on matters of compliance are final and nonappealable.⁶



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⁴ See *Grievance Procedure Manual* § 2.4.

⁵ *Id.*

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