

Issue: Compliance – Grievance Procedure (other issue); Ruling Date: March 26, 2014; Ruling No. 2014-3843; Agency: Department of Corrections; Outcome: Agency Not in Compliance.



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

COMPLIANCE RULING

In the matter of the Department of Corrections
Ruling Number 2014-3843
March 26, 2014

On March 20, 2014, the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management received a Grievance Form A – Dismissal Grievance forwarded by a facility of the Department of Corrections (the agency) purporting to challenge the grievant’s March 4, 2014 termination. The grievant had sent the grievance to the facility directly, rather than EDR.¹ Upon review of the materials submitted, EDR determined that the grievant had been terminated for alleged inmate abuse. Because such cases are heard by the appropriate Circuit Court,² EDR sent the parties a letter to that effect, dated March 21, 2014, directing the grievant to proceed with a hearing request to the court. The agency requested this ruling to dispute EDR’s determination as to the process for this grievance.

The agency takes the position that the grievance does not challenge a termination for inmate abuse, but rather the process in how the termination was accomplished. In short, prior to the termination in question, the grievant went out of work on short-term disability. The grievant appears to have sought to remain on short-term disability for as long as possible under that benefit and then resign from the agency. The agency cut off that opportunity by terminating the grievant. On or about March 14, 2014, the grievant submitted the instant grievance seeking, in part, for the agency to “retract” the termination.

After reviewing the submissions in this case, EDR respectfully disagrees with the agency’s position in this matter. First, the grievant submitted a dismissal grievance, which supports the notion that the grievant is indeed challenging his termination. In addition, it is clear from the grievance paperwork that the grievant disputes the agency’s termination as “premature” both because he submitted a future resignation and because he was on short-term disability. Whether such arguments are challenging the process of the termination or the termination itself is a distinction without a difference for purposes of initiating a grievance. In determining the issues challenged by a grievance, EDR looks to the management actions or omissions raised.³

¹ See *Grievance Procedure Manual* § 2.5.

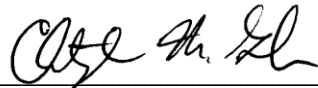
² Va. Code § 2.2-3007; *Grievance Procedure Manual* § 5.10.

³ See., e.g., *Grievance Procedure Manual* §§ 2.3, 2.4.

Whatever the theories the grievant has asserted (e.g., a termination process argument or an argument about the grounds of the termination), it is apparent that the management action the grievant has challenged is the fact he has been terminated effective March 4, 2014. Therefore, the grievant has initiated a grievance challenging a disciplinary termination.

Grievances challenging disciplinary terminations are generally addressed through the dismissal grievance process, which allows such grievances to proceed directly to hearing.⁴ However, the termination at issue here was for the grounds of inmate abuse, making the provisions of Virginia Code Section 2.2-3007 applicable. As such, EDR has no jurisdiction to provide a hearing in this case, as the law is clear that such hearings are heard by the appropriate Circuit Court.⁵ EDR has handled this grievance consistent with these provisions and other grievances challenging terminations for inmate abuse. EDR has not reviewed any compelling argument to process this grievance differently.

Based on the foregoing, EDR denies the agency's request. EDR's rulings on matters of compliance with the grievance procedure are final and nonappealable.⁶



Christopher M. Grab
Director
Office of Employment Dispute Resolution

⁴ *Grievance Procedure Manual* § 2.5.

⁵ To the extent the Circuit Court determines it has no jurisdiction to hear this case, EDR will re-open its file and proceed with an appointment for a hearing with an administrative hearing officer under the grievance procedure.

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