

Issue: Compliance – Grievance Procedure (other issue); Ruling Date: June 24, 2014;
Ruling No. 2014-3917; Agency: University of Virginia Medical Center; Outcome:
Grievant Not in Compliance.



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

COMPLIANCE RULING

In the matter of the University of Virginia Health System
Ruling Number 2014-3917
June 24, 2014

The University of Virginia Health System (the “agency”) has requested a ruling on whether the grievant’s grievance challenging his Notice of Appointment Cessation is properly considered a dismissal grievance under the grievance procedure. The agency asserts that such grievances do not qualify for the dismissal process, but must begin with the management resolution steps. For the reasons set forth below, the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management agrees with the position of the agency that the termination at issue here does not constitute a “dismissal” as defined by the *Grievance Procedure Manual*.

FACTS

The grievant was employed as an associate chief of nursing with the agency. On or about May 28, 2014, the grievant was given written notice of the agency’s termination of his appointment to this position. On or about June 10, 2014, the grievant initiated a grievance directly with EDR to challenge this separation from employment, as well as an alleged change to his performance evaluation. The agency seeks a ruling from EDR that the Notice of Appointment Cessation at issue in this case does not qualify for the dismissal grievance process and must therefore proceed through the management resolution steps.

DISCUSSION

The Code of Virginia, as amended in 2012, provides that “grievances involving dismissals due to formal discipline or unsatisfactory job performance shall proceed directly to a formal hearing, omitting the grievance resolution steps”¹ In this case, the grievant was not terminated through the agency’s formal disciplinary or performance management processes, but rather through a Notice of Appointment Cessation.² Although the grievant has alleged that his performance evaluation was revised to provide a justification for the cessation of his

¹ Va. Code § 2.2-3003(A); *Grievance Procedure Manual* § 2.5.

² See University of Virginia Medical Center Human Resources Policy 105, *Management Conditions of Employment*, § D(2) (“Members of management serve without the expectation of continued employment, are employed without contract or term and may be given notice of appointment cessation at any time.”).

employment, the method of termination used by the agency is not dependent on disciplinary action or a showing of poor performance.³ As such, his grievance cannot be considered a “dismissal grievance” under the grievance procedure.

CONCLUSION

For the reasons set forth above, EDR concludes that the Notice of Appointment Cessation provided to the grievant in this case shall not be considered a “dismissal” as defined by the *Grievance Procedure Manual*. However, the grievant may proceed through the management resolution steps,⁴ as EDR has long held that a grievance timely initiated but initiated with the wrong respondent will nevertheless be deemed timely.⁵ Section 3.4 of the *Grievance Procedure Manual* provides that grievances challenging separations not eligible for the dismissal grievance procedure may begin with the second-step respondent, under the Expedited Process. Accordingly, EDR directs the agency to contact the grievant within **five work days of the date of this ruling** to schedule the meeting at the single management step of the Expedited Process.⁶

EDR’s rulings on matters of compliance are final and nonappealable.⁷



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³ *See id.*

⁴ In the event the agency does not qualify the grievance for a hearing at the conclusion of the management steps, the grievant may appeal to EDR, at which point a determination will be made based on the facts and circumstances presented as to whether the grievance may qualify for hearing.

⁵ EDR Ruling No. 2011-2692; EDR Ruling No. 2007-1686; EDR Ruling No. 2006-1114; EDR Ruling No. 2004-645; EDR Ruling No. 2001-230.

⁶ *Grievance Procedure Manual* § 3.4. If both parties agree, the face-to-face meeting could be waived and the grievant provided with a written response to the grievance.

⁷ *See* Va. Code §§ 2.2-1202.1(5); 2.2-3003(G).