

Issue: Compliance – Grievance Procedure (other issue); Ruling Date: June 3, 2015; Ruling No. 2015-4092; Agency: Department of Corrections; Outcome: Grievant 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 2015-4092  
June 3, 2015

The grievant has requested a ruling on whether his December 18, 2014 grievance with the Department of Corrections (the agency) is in compliance with the grievance procedure. The agency asserts that the grievant has not adhered to the initiation requirements of the grievance procedure. For the reasons set forth below, the Office of Employment Dispute Resolution (EDR) determines that the grievance complies with the grievance procedure and will be permitted to proceed as discussed below.

FACTS

The facts of this case begin with the hearing officer's decision in a grievance hearing, Case Number 10286, which addressed the grievant's challenge to his termination from the agency's facility (Facility A). The hearing officer in Case Number 10286 reinstated the grievant to employment with the agency.<sup>1</sup> On or about November 5, 2014, the grievant was reinstated to his former position at Facility A, but placed on paid leave. On November 21, 2014, the grievant was notified that he was to report to work on November 24<sup>th</sup> whereupon he was informed he was transferred effective November 25<sup>th</sup> to Facility B. The grievant filed his December 18, 2014 grievance to challenge his placement at Facility B.

Along with a grievance, the grievant also pursued a petition for implementation of the hearing officer's order in Case Number 10286 in court. The Circuit Court addressed the grievant's claims in an order issued May 5, 2015. The Court determined that the hearing officer's decision had been followed in that the grievant had been reinstated to his former position and declined authority to address the grievant's placement at Facility B.

The agency administratively closed the December 18, 2014 grievance for noncompliance with the initiation requirements of the grievance procedure. The grievant appealed that determination to EDR in January 2015. However, due to the nature of the Court proceeding discussed in the preceding paragraph, EDR placed the grievant's ruling request on hold. Because the Court has ruled on the grievant's petition, EDR has reopened the ruling file and will now proceed to address the compliance issues in the December 18, 2014 grievance.

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<sup>1</sup> Decision of Hearing Officer, Case No. 10286, July 16, 2014, at 10.

### DISCUSSION

The grievance procedure provides that a grievance must not challenge “the agency’s implementation of or failure to implement a hearing officer’s decision.”<sup>2</sup> The agency closed the grievance on this basis because the grievant has argued in his December 18, 2014 grievance that the agency has failed to adhere to the reinstatement order in the hearing decision in Case Number 10286 by placing the grievant at Facility B rather than Facility A. The agency’s position is accurate in certain respects. To the extent the grievant is arguing that the agency’s move of the grievant to Facility B is contrary to the hearing officer’s decision in Case Number 10286, that is not a proper subject for this grievance.<sup>3</sup> However, to the extent he is challenging the transfer as a new management action,<sup>4</sup> the grievance does not run afoul of the initiation requirements of the grievance procedure.

The discussion of the issues in the Circuit Court’s order indicates that the transfer to Facility B does not appear to be a part of the grievant’s reinstatement ordered by the hearing officer. Rather, the agency has taken a new management action in choosing to transfer the grievant to Facility B after he was reinstated at Facility A. Indeed, the two actions are even separated in time: the grievant was reinstated November 5<sup>th</sup>, and transferred effective November 25<sup>th</sup>. Consequently, the grievant can appropriately challenge the transfer through the regular grievance procedure as a new management action that has occurred after his reinstatement. Like any new management action affecting the grievant’s employment, the grievant may pursue the grievance at least through the management steps of the grievance process.<sup>5</sup>

### CONCLUSION

Based on the foregoing, the grievant’s December 18, 2014 grievance is re-opened and shall be permitted to proceed. The grievance shall be returned to the appropriate first step-respondent to be addressed on the merits of the claims regarding his transfer to Facility B only.<sup>6</sup> Once received, the appropriate first step-respondent must provide a written response to the grievance within five workdays.<sup>7</sup> EDR’s rulings on matters of compliance are final and nonappealable.<sup>8</sup>



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<sup>2</sup> *Grievance Procedure Manual* § 2.4.

<sup>3</sup> *See id.* The grievance also includes claims regarding back pay, which would not be proper subjects for a new grievance either, but rather for the petition for implementation already filed and addressed by the court.

<sup>4</sup> The grievance asserts other arguments against the grievant’s placement at Facility B, including retaliation.

<sup>5</sup> Nothing in this ruling is meant to indicate that the grievance will or even can qualify for a hearing. The grievant asks that EDR qualify the grievance for a hearing. Such a request is premature. The grievance has not proceeded through the steps of the grievance process such that it has reached the qualification stage yet.

<sup>6</sup> The other actions challenged in the grievance are not permitted to proceed.

<sup>7</sup> To address this grievance more expeditiously, the parties could consider handling the grievance under the expedited process. *Grievance Procedure Manual* § 3.4.

<sup>8</sup> *See* Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).