

Issue: Compliance – Grievance Procedure (other issue); Ruling Date: March 12, 2015; Ruling No. 2015-4103; Agency: Department of Corrections; 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 Department of Corrections  
Ruling Number 2015-4103  
March 12, 2015

The Department of Corrections (the agency) has requested a ruling on whether the grievant's February 23, 2015 grievance is in compliance with the grievance procedure.

FACTS

On February 25, 2015, the Office of Employment Dispute Resolution (EDR) received three grievances from the grievant. Two grievances were initiated using a Grievance Form A – Dismissal Grievance and sought to challenge, respectively, a Group II and Group III Written Notice, both issued on February 18, 2015, which resulted in the grievant's separation from employment. The third grievance was initiated using a Grievance Form A and alleged workplace harassment as the issue.

The agency advances several arguments as to why the third grievance should be administratively closed. First, it argues that the grievant, having filed the grievance regarding workplace harassment after her termination from employment, does not have access to the grievance procedure. Also, it asserts that this grievance replicates many of the issues alleged in the first two, and thus is duplicative. Finally, it argues that the grievance would not qualify for a hearing, as it lacks sufficient evidence that the grievant was subject to harassment in the workplace. Accordingly, the agency seeks a compliance ruling regarding the February 23, 2015 grievance alleging workplace harassment.

DISCUSSION

If a Grievance Form A does not comply with the requirements for initiating a grievance, the agency may notify the employee, using the Grievance Form A, that the grievance will be administratively closed.<sup>1</sup> Here, because dismissal grievances are initiated directly with EDR,<sup>2</sup> the agency is essentially unable to follow this process as outlined. Thus, the agency requests a ruling from EDR regarding the issue of alleged noncompliance.

The agency argues that the grievant did not have access to file a grievance regarding workplace harassment following her separation from employment. To have access to the grievance procedure, the employee "[m]ust not have voluntarily concluded his/her employment

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<sup>1</sup> *Grievance Procedure Manual* § 2.4.

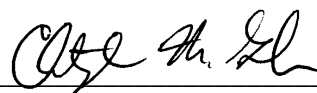
<sup>2</sup> *Id.* § 2.5.

with the Commonwealth prior to initiating the grievance.”<sup>3</sup> EDR has long held that once an employee’s voluntary resignation becomes effective, he or she is not covered by the grievance procedure and accordingly may not initiate a grievance.<sup>4</sup> However, in this instance, the grievant cannot be said to have “voluntarily” concluded her employment with the Commonwealth, as it is undisputed that she was terminated pursuant to formal disciplinary action. The grievant satisfies the other access requirements of the grievance procedure to challenge the issue of workplace harassment. Thus, we find that the grievant does indeed have access to the grievance procedure.

The *Grievance Procedure Manual* states that a grievance may not “challeng[e] the same management action or omission challenged by another grievance.”<sup>5</sup> In this instance, it appears that grievance alleging workplace harassment raises, at least in part, some issues identical to those raised in the two dismissal grievances. During the course of EDR’s investigation into this matter, the grievant has indicated that, in light of her dismissal grievance having been qualified for a hearing, she would be willing to forego the management resolution steps which would usually be required for such a grievance alleging workplace harassment. Accordingly, the February 23, 2015 grievance alleging workplace harassment will be considered closed and the grievances challenging the Group II and Group III Written Notices will proceed forward as the dismissal grievances challenging the grievant’s termination.<sup>6</sup>

However, the grievant is free to raise any arguments regarding her dismissal that were set forth in the grievance alleging workplace harassment.<sup>7</sup> In short, this matter will be treated as a single case wherein both disciplinary actions received on February 18, 2014 that resulted in the grievant’s termination are at issue. Any arguments the grievant wishes to assert to challenge the disciplinary actions and termination, including those listed on any of the three grievance forms and/or attachments, may properly be raised at the grievance hearing, if deemed relevant by the hearing officer, as specific grounds in opposition to the disciplinary actions or, at a minimum, as background evidence.

EDR’s rulings on matters of compliance are final and nonappealable.<sup>8</sup>



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<sup>3</sup> *Grievance Procedure Manual* § 2.3.

<sup>4</sup> *E.g.*, EDR Ruling No. 2005-1043.

<sup>5</sup> *Grievance Procedure Manual* § 2.4.

<sup>6</sup> Both of these matters will be heard as a single case wherein both Written Notices have been challenged. EDR has previously held that “[a]fter consideration of the circumstances particular to the dismissal grievance process, we find that a single termination, regardless of the number of Written Notices issued to the grievant on the same day that resulted in the termination, should ordinarily be assessed a single hearing fee. Such a result is consistent with assessing a single fee for the matter where a grievant seeks to challenge multiple Written Notices accompanying a termination using a single Form A.” EDR Ruling Nos. 2015-3959, 2015-3960, 2015-3961.

<sup>7</sup> Because the grievance has been closed and effectively merged with the dismissal grievances, EDR need not address the agency’s argument that the grievant would not qualify for a hearing.

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