

Issue: Compliance – Grievance Procedure (Hearings); Ruling Date: January 29, 2016; Ruling No. 2016-4297; Agency: Department of Behavioral Health and Developmental Services; Outcome: AHO in Compliance.



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

COMPLIANCE RULING

In the matter of the Department of Behavioral Health and Developmental Services
Ruling Number 2016-4297
January 29, 2016

The grievant has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”), in relation to his pending grievance proceeding against the Department of Behavioral Health and Developmental Services (“agency.”)

FACTS

On November 3, 2015, the agency issued the grievant a Group III Written Notice with termination for falsification of documents. The grievant grieved the disciplinary action on or about November 24, 2015, and a hearing officer was appointed in this matter on December 15, 2015.

Subsequent to the hearing officer’s appointment, on January 6, 2016, the grievant emailed the agency to ask that his disciplinary action be mitigated to “punishment equivalent to a thirty [30] day or forty-five [45] days (or more?) suspension without pay.” From information provided to EDR, it appears that the agency denied the grievant’s request for this relief, in whole or in part because his “layoff date occurred prior to the discipline date.”

On January 25, 2016, the grievant emailed the hearing officer to ask for “a ruling to substantiate or clarify more accurately the options available to [the agency].” In his request to the hearing officer, the grievant explained that he believed the agency’s reasoning for its denial was in error, as he contends the agency could “impose a dollar amount of reduction to the severance pay which would be equivalent to the suggested suspension time frame.” After the hearing officer advised the grievant that he could seek a ruling from EDR at any point regarding his concerns, on January 26, 2016, the grievant made a ruling request to EDR. From the information provided to EDR, it does not appear that the hearing officer has yet directly ruled on the grievant’s January 25, 2016 request.

DISCUSSION

EDR generally refrains from ruling on compliance matters during the hearings process until the hearing officer has had an opportunity to issue an order. In light of the unique situation

presented here, however, in the interests of efficiency, EDR believes it is necessary to provide some clarification to the parties.

It appears that the grievant has attempted to settle his grievance by reaching out to the agency prior to adjudication of the grievance by the hearing officer. Presumably, had the agency been willing to provide the relief sought by the grievant, the grievant would have in turn withdrawn his grievance. While the grievant certainly had the right to make an attempt to resolve the grievance prior to hearing, the agency was under no duty to accept the grievant's offer of settlement. Rather, the agency could choose, as it apparently has here, to allow the grievance to proceed to hearing, at which point the hearing officer will determine whether the disciplinary action was warranted and appropriate under the facts and circumstances. Whether, as the grievant appears to claim here, the agency's reasoning in denying the settlement offer is inaccurate or misguided is irrelevant: an agency has no obligation to accept a potential settlement.

To the extent the grievant believes the agency has misunderstood the relief he seeks or its ability to grant that relief, he may certainly communicate those concerns to the agency directly, and the agency remains free to accept his offer. However, neither EDR nor the hearing officer has the responsibility to intervene or persuade either party in settlement negotiations, as settlement decisions are within the sole discretion of the parties. As such, the relief sought by the grievant in this matter—a ruling “substantiat[ing] or clarify[ing]” the agency's options-- would not be appropriate.

EDR's rulings on matters of compliance are final and nonappealable.¹



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¹ Va. Code § 2.2-3003(G).