

Issue: Compliance – Grievance Procedure (other issue); Ruling Date: June 1, 2016;
Ruling No. 2016-4361; Agency: Department of Behavioral Health and Developmental
Services; 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 Behavioral Health and Developmental Services
Ruling Number 2016-4361
June 1, 2016

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether his May 4, 2016 grievance with the Department of Behavioral Health and Developmental Services (the “agency”) is in compliance with the grievance procedure.

FACTS

The grievant is employed at one of the agency’s facilities as a Trades Technician III. On or about April 1, 2016, the grievant received a due process notice stating that the agency was considering issuing him a Group I Written Notice for “[e]xcessive [t]ardiness.” The grievant provided the agency with a response on April 4, in which he argued that agency policy provides that an employee “is not considered to be excessively tardy, unless he/she is tardy for three days within a scheduled work week” and stated that he had not been late for three days in any of the three weeks preceding his receipt of the due process notice. The agency’s records indicate that no Written Notice for excessive tardiness was issued to the grievant. However, on April 7, the grievant received a letter from the agency stating that the Group I Written Notice was “rescinded as of April 5, 2016.”

On or about May 4, 2016, the grievant attempted to initiate a grievance with the agency, listing “[e]xcessive tardiness” as the issue, asserting that his supervisor “provided misleading information about [his] time,” and requesting an “[i]nvestigation of falsification of time policies and time cards provided by” his supervisor. The grievant also seeks a new supervisor. According to the information provided by the grievant, when he presented the grievance to his supervisor, she stated that “she felt it [sic] was no need to move forward” because the Written Notice had been rescinded. The grievant disputes the supervisor’s decision and appeals to EDR for a ruling on whether the grievance may proceed.

DISCUSSION

The *Grievance Procedure Manual* provides that, with certain exceptions, “any management actions or omissions may be grieved”¹ If an agency believes that an employee’s grievance does not comply with the requirements for initiating a grievance, “[m]anagement may notify the employee, using the Grievance Form A, that the grievance will be administratively closed due to noncompliance and that the employee may seek a compliance

¹ *Grievance Procedure Manual* § 2.4.

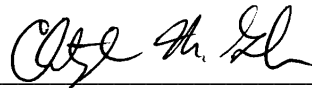
ruling from the EDR.”² In this case, the agency did not formally close the grievance, nor did it notify the grievant of his right to appeal to EDR. However, the grievant’s supervisor clearly informed him she thought the grievance should not proceed, and the grievant has requested a ruling from EDR to overturn that decision. Under these circumstances, it is more expedient for EDR to determine whether the grievance should proceed at this time rather than returning the grievance to the agency for a formal notice of administrative closure, as that additional step would serve only to needlessly delay the issuance of a ruling from EDR.

Although the agency has not identified the specific basis on which it argues the grievance does not comply with the initiation requirements of the grievance procedure, it has indicated that the grievant’s supervisor saw no need for the grievance to proceed as all relief (i.e., the removal of the Written Notice) had already been granted. While the agency’s assertion could, in certain circumstances, support administrative closure of a grievance, this is not a case where such an action is justified. The grievance alleges that the grievant’s supervisor “provided misleading information” that resulted in his receipt of the April 1, 2016 due process notice. The grievance does not expressly dispute any disciplinary action, nor does the grievant request the removal of a Written Notice. The grievance appears instead to indicate that the grievant disagrees with his supervisor’s allegedly improper conduct and seeks a review of the applicable policies and allegedly misleading information provided by his supervisor that resulted in the issuance of the April 1 due process notice. The grievance further seeks to be removed from the direction of the supervisor. It cannot be said, therefore, that the grievance solely challenges the grievant’s receipt of a Written Notice or that the decision not to issue said Written Notice provides all the relief the grievant has sought in this grievance.

CONCLUSION

Based on the foregoing, the grievance is re-opened and shall be permitted to proceed. Although the grievant apparently initiated the grievance with his supervisor, he has noted on the form that he believes she is discriminating and/or retaliating against him. The grievance procedure provides that “[a] grievance alleging discrimination or retaliation by the immediate supervisor may be initiated with the next level supervisor”³ The grievance should therefore be returned to the next level supervisor to be addressed on the merits of its claims.

EDR’s rulings on matters of compliance are final and nonappealable.⁴



Christopher M. Grab
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Office of Employment Dispute Resolution

² *Id.* § 6.2.

³ *Grievance Procedure Manual* § 2.4.

⁴ *See* Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).