

Issue: Compliance – Grievance Procedure (general); Ruling Date: February 28, 2018;
Ruling No. 2018-4684; Agency: Virginia Department of Transportation; Outcome:
Grievant in Compliance.



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

COMPLIANCE RULING

In the matter of the Virginia Department of Transportation
Ruling Number 2018-4684
February 28, 2018

The Virginia Department of Transportation (the agency) seeks a compliance ruling concerning the grievant's two February 21, 2018 grievances.

FACTS

On February 21, 2018, the grievant initiated two grievances directly with the Office of Equal Employment and Dispute Resolution (EEDR), in each instance utilizing a Dismissal Grievance Form A to challenge his separation from employment. In its response to EEDR, the agency asserts that the grievant did not request relief that can be granted under the *Grievance Procedure Manual* and accordingly, requests a ruling that the first grievance is out of compliance with the grievance procedure.

DISCUSSION

The *Grievance Procedure Manual* indicates that “[a]n employee must initiate a grievance on a fully completed ‘Grievance Form A’ . . . [which] must state the management action(s) or omission(s) being grieved, the facts in support of the grievance, and the relief requested.”¹ In this instance, the grievant wrote as the relief he requests on the first Grievance Form A “[t]o raise management awareness to the incompetent leadership and behavior of” a particular employee. To this, the agency argues that the requested relief is not within the purview of relief that a hearing officer may grant under the grievance procedure. On the second Grievance Form A, the grievant requested as relief “4 years of state service and back-pay to cover this grievance action.”

The *Rules for Conducting Grievance Hearings* provide that “the hearing officer is not limited to the specific relief requested by the employee on the Form A”² For example, the *Rules* list as potential remedies upholding or reversing the disciplinary action, or reinstating the grievant with back pay.³ Even if the grievant does not wish to be reinstated, the hearing officer is not precluded from awarding other remedies associated with reinstatement, if warranted,

¹ *Grievance Procedure Manual* § 2.4.

² *Rules for Conducting Grievance Hearings* § VI(A).

³ *See id.* §§ VI(B), VI(D).

regardless of whether the grievant intends to resume employment with the agency, as well as removing documents from the grievant's file related to the separation. Awarding appropriate relief to remedy the actions challenged would be squarely within the purview of a hearing officer, regardless of relief requested on the Form A.⁴ Thus, the grievant may choose to exercise his right to challenge the disciplinary action itself via the grievance procedure, as he has clearly done here.

However, the *Grievance Procedure Manual* states that a grievance may not "challeng[e] the same management action or omission challenged by another grievance."⁵ In this instance, it appears that the two February 21, 2018 grievances both essentially challenge the same action (the grievant's termination). Thus, there exists a basis to close one of the February 21 grievances as the two grievances are duplicative of each other.

Accordingly, the grievance requesting as relief "to raise management awareness to the incompetent leadership and behavior of" a particular employee will be considered closed and the other grievance will proceed forward as the dismissal grievance challenging the grievant's termination. This ruling does not foreclose the grievant's ability to raise any arguments regarding his dismissal that were set forth in either grievance. Within five workdays of receipt of this ruling, the agency shall request the appointment of a hearing officer, using the Grievance Form B. EEDR's rulings on matters of compliance are final and nonappealable.⁶



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⁴ EDR Ruling No. 2017-4412 n.1.

⁵ *Grievance Procedure Manual* § 2.4.

⁶ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).