

Issue: Compliance – Grievance Procedure (other issue); Ruling Date: July 30, 2013;
Ruling No. 2014-3658; Agency: Department of Veterans 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 Veterans Services
Ruling Number 2014-3658
July 30, 2013

The Department of Veterans Services (the agency) seeks a compliance ruling concerning the grievant's July 11, 2013 grievance. The agency alleges that the grievant has failed to comply with certain requirements of the grievance procedure.

FACTS

On July 11, 2013, the grievant initiated a grievance directly with the Office of Employment Dispute Resolution (EDR), utilizing the Dismissal Grievance Form A to challenge her separation from employment. In its response, the agency asserts that the grievant's separation from employment does not constitute a "dismissal" under the provisions of the *Grievance Procedure Manual* and accordingly, the grievant is out of compliance with the grievance procedure. Thus, the agency now seeks a compliance ruling allowing it to administratively close the grievance.

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.¹ Here, the agency points out that because dismissal grievances are initiated directly with EDR, it is unable to follow this process as outlined. Accordingly, the agency requests a ruling from this Office regarding the issue of alleged noncompliance.

The *Grievance Procedure Manual* defines "dismissals" as terminations due to formal discipline or unsatisfactory job performance.² In this instance, the grievant was removed due to circumstances preventing her from performing her job, specifically, prior conviction of a barrier crime under the Code of Virginia. We agree with the agency that the grievant's separation from employment does not constitute a "dismissal" as defined by the *Grievance Procedure Manual*, and accordingly, this grievance is not eligible for the dismissal grievance process. The grievant may, however, challenge her separation through the ordinary or expedited grievance process as she would any other management action or omission.

¹ *Grievance Procedure Manual* §6.2.

² Va. Code § 2.2-3003(A); *Grievance Procedure Manual* § 2.5.

Consistent with this analysis, this ruling will also address the timeliness of the grievance to challenge the grievant's separation from employment. EDR has consistently held that a grievance initiated in a timely manner but with the wrong management representative will not bar a grievance for noncompliance.³ Rather, the remedy in such a situation is either for management to provide the grievance paperwork to the appropriate step-respondent or return the grievance to the grievant for submission to that step-respondent. In either case, for purposes of timeliness, the initiation date of the grievance will be considered the date it was submitted initially. EDR views using the wrong grievance form or attempting to use the dismissal grievance process where there is not a right to do so as noncompliance of a similar nature that should be remedied in the same manner. Thus, the grievant is directed to resubmit her grievance on a Grievance Form A – Expedited Process to the agency **within five workdays of receipt of this ruling**. Once received, the agency must proceed with the management steps of the grievance procedure.⁴ There is not a basis to close this grievance for noncompliance as it was simply directed to the wrong location.

EDR's rulings on matters of compliance are final and nonappealable.⁵



Christopher M. Grab
Director
Office of Employment Dispute Resolution

³ E.g., EDR Ruling No. 2011-2692; EDR Ruling No. 2007-1686; EDR Ruling No. 2006-1114; EDR Ruling No. 2001-195; EDR Ruling No. 99-007.

⁴ If a grievant were to refuse or dispute who the appropriate step-respondent should be, either party could request a compliance ruling from EDR following written notice of noncompliance to the opposing side. *Grievance Procedure Manual* § 6.3.

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