

Issue: Compliance – Grievance Procedure (other issue); Ruling Date: October 1, 2013; Ruling No. 2014-3725; Agency: Department of Behavioral Health and Developmental Services; 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 Behavioral Health and Developmental Services
Ruling Number 2014-3725
October 1, 2013

The Department of Behavioral Health and Developmental Services (the agency) seeks a compliance ruling concerning the matter of the grievant's filing of a dismissal grievance.

FACTS

On or about June 27, 2013, the grievant initiated a grievance directly with the Office of Employment Dispute Resolution (EDR), utilizing the Grievance Form A – Expedited Process to challenge her separation from employment. The agency subsequently provided the Form B, *Request for Appointment of Hearing Officer*, and accompanying documentation, per EDR's request. On or about July 19, 2013, the grievant, through counsel, mailed a second grievance to EDR regarding the grievant's termination, utilizing the Dismissal Grievance Form. The agency argues that the July 19 grievance is duplicative of the June 27 grievance and thus out of compliance with the grievance procedure. As such, it 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,² and because it had already provided EDR with the *Request for Appointment of Hearing Officer*, it is essentially 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* states that a grievance may not "challeng[e] the same management action or omission challenged by another grievance."³ In this instance, it appears that the July 19 grievance challenges the same action as the June 27 grievance (the grievant's termination) and may have been filed in order to correct the grievant's use of the incorrect form

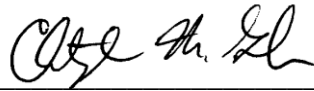
¹ *Grievance Procedure Manual* § 2.4.

² *Grievance Procedure Manual* § 2.5.

³ *Grievance Procedure Manual* § 2.4.

initially.⁴ While we make no finding of noncompliance for the grievant's use of an incorrect form, there still exists a basis to close the July 19 grievance as it duplicates the June 27 grievance.

Accordingly, the grievant's July 19 grievance will be considered closed. The June 27 grievance paperwork will proceed forward as the grievant's "dismissal grievance" challenging her termination. This ruling does not foreclose the grievant's ability to raise any arguments regarding her dismissal that were set forth in the grievance of July 19. EDR's rulings on matters of compliance are final and nonappealable.⁵



Christopher M. Grab
Director
Office of Employment Dispute Resolution

⁴ Dismissal grievances filed directly with EDR that utilize a Grievance Form A or Grievance Form A – Expedited Process rather than a Dismissal Grievance Form A are nevertheless generally treated as properly filed dismissal grievances when they clearly challenge a termination that constitutes a "dismissal."

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