

Issue: Compliance – Grievance Procedure (Other Issue); Ruling Date: November 8, 2013; Ruling No.2014-3756; Agency: University of Virginia Health System; 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 University of Virginia Health System
Ruling Number 2014-3756
November 8, 2013

The University of Virginia Health System (the “agency”) has requested a ruling on whether the grievant’s Notice of Appointment Cessation grievance is considered a “dismissal” under the grievance procedure. The agency asserts that such grievances do not qualify for the dismissal process, but must begin with the management resolution steps. For the reasons set forth below, the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management agrees with the position of the agency that the termination at issue here does not constitute a “dismissal” as defined by the *Grievance Procedure Manual*.

FACTS

The grievant was employed as a nurse manager with the agency. On or about September 25, 2013, the grievant was given written notice of the agency’s termination of her appointment to this position. The grievant initiated a dismissal grievance directly with EDR to challenge this separation from employment. The agency seeks a ruling from EDR that the Notice of Appointment Cessation at issue in this case does not qualify for the dismissal grievance process and must therefore proceed through the management resolution steps.

DISCUSSION

The Code of Virginia, as amended in 2012, provides that “grievances involving dismissals due to formal discipline or unsatisfactory job performance shall proceed directly to a formal hearing, omitting the grievance resolution steps.”¹ In this case, the grievant was not terminated through the agency’s formal disciplinary or performance management processes, but rather through a Notice of Appointment Cessation.² Although the grievant has presented evidence that her supervisor considered her performance to be unsatisfactory, the method of termination used by the agency is not dependent on disciplinary action or a showing of poor

¹ Va. Code § 2.2-3003(A); *Grievance Procedure Manual* § 2.5.

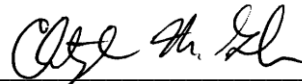
² See University of Virginia Medical Center Human Resources Policy 105 (“Members of management serve without the expectation of continued employment, are employed without contract or term and may be given notice of appointment cessation at any time.” (citation omitted)).

performance.³ As such, her grievance cannot be considered a “dismissal grievance” under the grievance procedure.

CONCLUSION

For the reasons set forth above, EDR concludes that the Notice of Appointment Cessation provided to the grievant in this case shall not be considered a “dismissal” as defined by the *Grievance Procedure Manual*. However, the grievant may proceed through the management resolution steps, as EDR has long held that a grievance timely initiated but initiated with the wrong respondent will nevertheless be deemed timely.⁴ Section 2.4 of the *Grievance Procedure Manual* provides that grievances challenging separations not eligible for the dismissal grievance procedure may begin with the second-step respondent, under the Expedited Process. Accordingly, EDR directs the grievant to contact the agency within **ten work days of the date of this ruling** to advise whether she wishes to utilize the Expedited Process with respect to this grievance.⁵

EDR’s rulings on matters of compliance are final and nonappealable.⁶



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Director
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³ *See id.*

⁴ EDR Ruling No. 2011-2692; EDR Ruling No. 2007-1686; EDR Ruling No. 2006-1114; EDR Ruling No. 2004-645; EDR Ruling No. 2001-230.

⁵ In the event the agency does not qualify the grievance for a hearing at the conclusion of the management steps, the grievant may appeal to EDR, at which point a determination will be made based on the facts and circumstances presented as to whether the grievance may qualify for hearing.

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