

Issue: Compliance – Grievance Procedure (Other Issue); Ruling Date: July 25, 2014;
Ruling No. 2014-3928; 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 & Developmental Services
Ruling Number 2014-3928
July 25, 2014

The Department of Behavioral Health & Developmental Services (the agency) has requested a ruling on whether the grievant's June 5, 2014 grievance is in compliance with the grievance procedure.

FACTS

On May 22, 2014, the Office of Employment Dispute Resolution (EDR) received a Dismissal Grievance Form A from the grievant wherein she sought to challenge her separation from employment. On May 27, 2014, EDR received the agency's Form B – Request for Appointment of Hearing Officer. On June 9, 2014, EDR received a second Grievance Form A – Dismissal Grievance from the grievant, noted as a “corrected copy” and dated June 5, 2014 at the top of the form. The agency argues that the corrected copy of the grievance adds new issues and new requests for relief, some beyond the thirty calendar day time frame in which a grievance must be filed. Accordingly, the agency seeks a compliance ruling regarding the June 5, 2014 “corrected” 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, because dismissal grievances are initiated directly with EDR,² the agency is essentially unable to follow this process as outlined. Thus, the agency requests a ruling from EDR regarding the issue of alleged noncompliance.

The *Grievance Procedure Manual* states that “[o]nce the grievance is initiated, challenges to additional management actions or omissions cannot be added.”³ An employee would need to file a new grievance in order to challenge a new management action.⁴ Here, the

¹ *Grievance Procedure Manual* § 2.4.

² *Id.* § 2.5.

³ *Id.* § 2.4.

⁴ *Id.*

new “issues” added by the grievant on the June 5 grievance include the “[f]ailure of [agency] management to train employees how to document appropriately” and to “address neglect/abuse of coworkers involved in this event.” While these issues may be alleged omissions of management, they primarily appear to be arguments raised by the grievant in challenging the disciplinary action that led to her termination, the ultimate subject of this grievance. While perhaps more appropriately couched as “facts” on the grievance form, we do not find that these statements, standing alone, would constitute separate management actions for which a new grievance would need to be filed. Thus, in this instance, it does not appear that the June 5, 2014 “corrected” grievance seeks to challenge a new management action and we cannot find noncompliance on that basis.

Further, the agency points out that the grievant lists under “facts” a Notice of Improvement Needed dated April 12, 2014, and a HIPAA complaint filed by the grievant in April 2014, and argues that the grievance is not timely filed in order to challenge those issues. As mentioned above, EDR has closely reviewed the Grievance Form A and determined that the subject of this grievance is the Group III Written Notice and accompanying termination. The Notice of Improvement Needed or reported HIPAA violations may be relevant considerations for the hearing officer in assessing the position of each party in this matter, but we do not find that the Notice of Improvement Needed or alleged HIPAA violations are properly before the hearing officer for adjudication.

Finally, the agency asserts that the “corrected” grievance form adds additional requests for relief, some of which the hearing officer lacks authority to grant. However, 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.”⁵ We decline to establish, based solely upon the Grievance Form A, what types of relief might be appropriate in this particular instance. Such determinations are squarely within the purview of the hearing officer in rendering a hearing decision.


The *Grievance Procedure Manual* states that a grievance may not “challeng[e] the same management action or omission challenged by another grievance.”⁶ In this instance, it appears that the June 5, 2014 grievance seeks to challenge the same action (the Group III Written Notice issued to the grievant and accompanying termination) as the grievance dated May 21, 2014. Thus, there exists a basis to close the June 5 grievance as the two grievances are duplicative of each other. Accordingly, the June 5, 2014 grievance will be considered closed and the grievance dated “05/21/14” will proceed forward as the dismissal grievance challenging the grievant’s termination. However, the grievant is free to raise any arguments regarding her dismissal that were set forth in the “corrected” grievance of June 5, 2014. In short, the May 21, 2014 dismissal grievance is a challenge to the disciplinary action received that resulted in the grievant’s termination. Any arguments the grievant wishes to assert to challenge the disciplinary action and termination, including those listed on either grievance form and/or attachments, may

⁵ *Rules for Conducting Grievance Hearings* § VI(A).

⁶ *Grievance Procedure Manual* § 2.4.

properly be raised at the grievance hearing, if deemed relevant by the hearing officer, as specific grounds in opposition to the disciplinary action or, at a minimum, as background evidence.

EDR's rulings on matters of compliance are final and nonappealable.⁷



Christopher M. Grab
Director
Office of Employment Dispute Resolution

⁷ See Va. Code §§ 2.2-1202.1(5); 2.2-3003(G).