

Issue: Compliance – Grievance Procedure (other issue); Ruling Date: October 22, 2014; Ruling No. 2015-4022; Agency: Department of Small Business and Supplier Diversity; 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 Small Business and Supplier Diversity
Ruling Number 2015-4022
October 22, 2014

The Department of Small Business and Supplier Diversity (the agency) has requested a ruling from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management on whether the grievance initiated by the grievant on or about October 2, 2014 is in compliance with the grievance procedure.

FACTS

On October 3, 2014, EDR received a Grievance Form A from the grievant wherein he sought to challenge his termination from employment. The agency has taken the position that the grievance does not comply with the grievance procedure because 1) the grievant appears to raise a claim of harassment for separate consideration and 2) the grievant requests relief that is not available under the grievance procedure. 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 Because dismissal grievances are initiated directly with EDR,² an agency is essentially unable to follow this process as outlined. Accordingly, it has requested a ruling from this Office regarding the issue of alleged noncompliance.

DISCUSSION

The agency asserts that the grievant may be raising a claim of harassment separate from the discipline that led to his termination, and requests a ruling on the scope of the grievance. As support for this position, the agency points out that the grievant states, "I also have over ten months of emails that can be supplied that show [my supervisor's] ongoing harassment and ongoing deception of the facts of my work performance." EDR has thoroughly reviewed the grievance and the submitted attachments and is unable to conclude that a separate issue has been raised by the mention of supporting documentation as outlined above. Rather, the sentence cited by the agency follows a reference by the grievant to the documentation that he has chosen to attach to his Form A. It appears that the grievant seeks only to mention additional supporting documentation which he possesses, but does not include with the Form A. A grievant may argue alternative theories as to why the challenged management actions or omissions were improper. Here, it appears that the grievant raises the issue of harassment to demonstrate why he believes

¹ *Grievance Procedure Manual* § 2.4.

² *Grievance Procedure Manual* § 2.5.

his termination to be improper. In challenging his termination, the grievant may present these arguments at the grievance hearing if he so desires.

Further, the agency argues that as the grievant seeks no relief in his Grievance Form A that would be available to him pursuant to the grievance procedure, the grievance is procedurally flawed. On the Grievance Form A, the grievant requests that three other agency employees be issued discipline and terminated, that he receive three million dollars in damages, and that his retirement be enhanced such that his years of service to the Commonwealth are made complete. With respect to the agency's assertion that the hearing officer has no authority to award these remedies, EDR agrees with the agency. Among other things, the *Grievance Procedure Manual* specifies that damages and "[t]aking any adverse action against an employee (other than upholding or reducing the disciplinary action challenged by the grievance)" are forms of relief which may not be ordered by a hearing officer.³

However, Section VI(A) of the *Rules for Conducting Grievance Hearings* provides that the hearing officer "is not limited to the specific relief requested by the employee on the Form A."⁴ Simply because the grievant requests relief beyond the scope of which the hearing officer can award does not mean that the grievance is non-compliant with the *Grievance Procedure Manual*. Thus, in accordance with the *Rules for Conducting Grievance Hearings*, the hearing officer shall have the authority, if he or she finds that improper action occurred in this case, to order the appropriate corrective actions regardless of the relief requested on the Grievance Form A.⁵ This relief may include, but shall not be limited to, ordering the reinstatement of the grievant with backpay, appropriate attorney's fees, and ordering the agency to create an environment free from harassment (should the grievant be reinstated).⁶ If the grievant is not seeking any of these forms of relief and is only seeking damages, enhanced retirement, additional years of service, and disciplinary actions against other state employees, he should consider withdrawing his grievance as the grievance process will not provide him any relief he desires.

CONCLUSION

For the reasons set forth above, the grievant's October 2, 2014 grievance will not be closed as non-compliant with the grievance procedure and is qualified for hearing as outlined this ruling. A hearing officer will be appointed in forthcoming correspondence. EDR's rulings on matters of compliance are final and nonappealable.⁷



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³ *Grievance Procedure Manual* § 5.9(b).

⁴ *Rules for Conducting Grievance Hearings* § VI(A).

⁵ *See id.*

⁶ *Id.* § VI(C), (D), (E).

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