

Issue: Compliance – Grievance Procedure (Second Step Meeting) (request to reconsider Ruling No. 2016-4195); Ruling Date: September 11, 2015; Ruling No. 2016-4212; Agency: Virginia Department of Transportation; Outcome: No change in outcome - Agency Remains in Compliance.



**COMMONWEALTH of VIRGINIA**  
**Department of Human Resource Management**  
**Office of Employment Dispute Resolution**

**COMPLIANCE RULING**

In the matter of the Virginia Department of Transportation  
Ruling Number 2016-4212  
September 11, 2015

The grievant has requested that the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) reconsider EDR Ruling Number 2016-4195, in which EDR ruled on various aspects of alleged noncompliance with the grievance procedure in relation to the grievant’s November 5, 2014 grievance with the Virginia Department of Transportation (the “agency”). In the grievant’s original ruling request, he asserted various issues of noncompliance with the second step-respondent’s written response to the grievance, including the characterization of the grievant’s requested relief, the sufficiency of the response in addressing the issues raised by the grievant, and the authority asserted by the second step-respondent.<sup>1</sup> In EDR Ruling Number 2016-4195, EDR determined that the agency had not failed to comply with the grievance procedure, contrary to the grievant’s assertions. The grievant disagrees and has requested that EDR reconsider its ruling. The grievant’s allegations are addressed below.<sup>2</sup>

DISCUSSION

*Allegation 1 – Representation of Relief*

The grievant contests EDR’s summarized description of his requested relief in EDR Ruling Number 2016-4195 and the agency’s description of his requested relief in the second step response related to the grievant’s demand for the agency to produce documentation. The grievant was asked during the second step meeting if the agency had provided him with all of the requested information. The grievant states he told the second step-respondent that there were no outstanding requests for information.

If the grievant’s requests for information and documentation are truly satisfied, further discussion of this request for relief is moot if all the information was provided. Either the

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<sup>1</sup> EDR Ruling No. 2016-4195.

<sup>2</sup> Another allegation, not specifically addressed below, is the grievant’s assertion, at varying times, that EDR has failed to comply with its past rulings on compliance with the grievance procedure. EDR has reviewed the specific rulings cited by the grievant in his addendum to the ruling request that resulted in EDR Ruling Number 2016-4195. While the grievant may disagree, EDR maintains that its rulings in this matter are consistent with the grievance procedure and the principles reflected in the cited rulings under the specific facts and circumstances presented by this grievance.

grievant's document requests have been satisfied, or he can raise the agency's alleged failure to produce documentation under the noncompliance provisions of the grievance procedure.<sup>3</sup> Otherwise, the grievant's argument about how EDR and the second step response accurately or inaccurately described his request for documents as a form of relief is not material to the resolution of the issues in this case.

The grievant also appears to state that EDR has determined that an agency is "free to 'interpret' the grievance and relief to whatever it wants . . . ." EDR has made no such finding. Consequently, there is no basis to reconsider EDR Ruling Number 2016-4195 under this first allegation.

#### *Allegation 2 – Adequacy of the Second Step Response*<sup>4</sup>

The grievant contests EDR's description of a portion of his requested relief as seeking a return to his former position. The grievant is correct that he has not specifically sought return to his exact former position, but rather a general position at a particular level of seniority and classification. In this manner, EDR's description of his requested relief was inaccurate. However, this difference in language had no bearing on the outcome of EDR Ruling Number 2016-4195. Whether the grievant was seeking return to a general position or his precise former position is immaterial to EDR's determinations of the issues raised in the ruling.

The grievant also maintains that the second step response did not address all of the issues presented in his grievance and specifically raised with the second step-respondent at the meeting. The grievant lists five issues presented at the second step, all of which contest on varying theories that the agency has acted improperly in failing to execute a "return assignment" for the grievant and the agency's alleged "reneging" on a commitment to do so. As the second step-respondent specifically addressed the issues of the grievant's employment status (temporary versus permanent assignment), the sought-after "return assignment," and the agency's alleged commitment to such a "return assignment," EDR found and continues to find that the issues identified by the grievant were addressed by the second step response, though briefly, enough to satisfy the minimum requirements of the grievance procedure in addressing the issues and relief requested.<sup>5</sup>

While EDR understands the grievant's frustration in possibly wanting a more detailed response to his grievance, we are unsure what more the agency could provide on some of these issues. For example, to the extent the grievant seeks a more direct response to his arguments regarding the allegedly reneged commitment to a "return assignment," the agency's position at this point cannot be construed as anything other than such a "return assignment" will not be

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<sup>3</sup> *Grievance Procedure Manual* § 6.3. If any of the grievant's ruling requests to EDR have been attempts to address the agency's alleged failure to provide documents under Section 8.2 of the *Grievance Procedure Manual*, it has not been apparent.

<sup>4</sup> The grievant raises a number of allegations under this section of his request. Some of the grievant's allegations in this section overlap with issues presented under other headings and are addressed elsewhere.

<sup>5</sup> See *Grievance Procedure Manual* § 3.2.

forthcoming. The grievant's request for reconsideration presents no grounds for EDR to alter its original ruling.

### *Allegation 3 – Standard of Evidence*

The grievant alleges that EDR has applied different standards of evidence between the agency and the grievant. Different standards of evidence have not been applied. There is no basis to reconsider the ruling on this theory.

### *Allegation 4 – Discrimination Claim*

The grievant takes issue with EDR's assessment that the grievant first raised a discrimination claim during the second step that was not specifically included in the grievance when initiated. First, the grievant's allegation that the agency has failed to comply with "all DHRM policies" is too vague to raise a claim of discrimination. No reasonable reader could be expected to discern from such a general allegation that a claim of discrimination was intended any more than one could interpret this language to mean that the grievant intended to assert that the agency has truly violated all existing DHRM policies, many of which obviously have no bearing on the case. While EDR does not expect a great deal of particularity or detail to raise a claim effectively, there needs to be something in the grievance when initiated that reasonably puts the agency on notice that such a claim exists.<sup>6</sup> The general allegation of a violation of "all DHRM policies" does not meet that expectation.

However, the grievant raises a valid point that he cited to a specific memo from the agency head, which mentions the agency's position on workplace discrimination. Such an assertion would be sufficient to at least raise the claim of discrimination. Although perhaps asserted generally, the grievance as initiated contained no detail of what the grievant's allegations were in that regard. The grievant did not explain the basis of the discrimination claim or the particular factor(s) on which his claim rested. The grievant has apparently now done so at the second step. In the end, nothing in EDR's ruling prevents the grievant from raising the claim of discrimination as to the management actions challenged by the grievance, which was already stated in EDR Ruling Number 2016-4195. EDR has not attempted to prevent the grievant from raising discrimination as an issue. The grievant is free to raise the claim of discrimination challenged in his grievance.


## CONCLUSION

Based on the foregoing, EDR finds no basis to reconsider the outcome of the original ruling. To proceed with the grievance, the grievant must either advance the grievance to the next step or notify the agency's human resources office in writing that he wishes to conclude his

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<sup>6</sup> EDR's precedents have allowed a grievant to raise later in a grievance additional theories, including discrimination, as to why the management actions or inactions challenged in a grievance were improper, even if those theories were not raised in the initial filing. *See, e.g.*, EDR Ruling No. 2007-1444 n.1. For this reason, the grievant's assertion of discrimination as to the management actions or inactions grieved is proper, as discussed below and in EDR Ruling Number 2016-4195.

grievance **within five workdays of receipt of this ruling.** EDR's rulings on matters of compliance are final and nonappealable.<sup>7</sup>



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<sup>7</sup> See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).