

Issue: Compliance – Grievance Procedure (other issue); Ruling Date: October 12, 2016; Ruling No. 2017-4423; Agency: Virginia Community College System; Outcome: Agency in Compliance.



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

COMPLIANCE RULING

In the matter of the Virginia Community College System
Ruling Number 2017-4423
October 12, 2016

The Virginia Community College System (the “agency”) has requested a compliance ruling regarding the grievant’s September 7, 2016 dismissal grievance initiated with the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”). The agency asserts that the grievant has been provided with all of the relief requested in her grievance and thus, the grievance should be considered moot and administratively closed.

FACTS

On September 7, 2016, the grievant initiated a grievance with EDR, challenging a Group II Written Notice and accompanying termination issued to her on August 11, 2016. She indicated that the issue of the grievance was termination and alleged improper retaliatory motives on the part of the agency in issuing the disciplinary action. As relief, she requested an outside expert’s review of agency processes, rescission of the termination and reinstatement to state employment. In response, the agency requested the appointment of a hearing officer from EDR.

Prior to the appointment of a hearing officer for this matter, the agency determined that it desired to settle the matter without a hearing. The grievant declined the agency’s settlement offer, citing to concerns with her former supervisor, proposed Employee Work Profile (“EWP”), and pay. The agency subsequently rescinded the Written Notice, reinstated the grievant under a new supervisor, restored her benefits and leave, and provided her with back pay for the time she has been out of work. Accordingly, the agency requested a ruling from EDR that the grievance be closed as the issues presented in the grievance have been resolved, according to the agency. The grievant has provided additional information to EDR, indicating that she no longer wishes to return to work at the agency, alleging a hostile work environment.¹

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

¹ EDR has reviewed the additional information provided by the grievant and, to the extent that the grievant presents issues that may be alleged as a hostile work environment, she may initiate a new grievance in order to have those matters addressed.

administratively closed.² Because dismissal grievances are initiated directly with EDR, an agency is essentially unable to follow this process as outlined. Accordingly, the agency requests a ruling from this Office that it may administratively close this grievance.

In this case, the agency has rescinded the Group II Written Notice, reinstated the grievant, and provided her with back pay. As a result, no termination exists to be challenged through the dismissal grievance process.³ Proceeding directly to a hearing would not be in compliance with the grievance procedure in such a matter as the grievant no longer has access to the dismissal grievance process.⁴ Further, a hearing officer would be unable to provide the grievant with any additional relief beyond that which has already been granted to her by the agency.

Accordingly, because the dismissal no longer exists, it would be improper for this dismissal grievance to proceed to a hearing. Though the grievant may no longer wish to return to work at the agency, neither EDR nor a hearing officer has jurisdiction to address the fact that the grievant has been reinstated and is under an obligation to return to work per the agency's instructions.⁵ Should the grievant have continuing issues to contest, such as a hostile work environment, EWP, and/or salary issues, those can be challenged in a new grievance upon the grievant's return to work. While there is no basis for EDR to find noncompliance on the part of either party, this grievance will not proceed further and it is, therefore, administratively closed.

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



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Office of Employment Dispute Resolution

² *Grievance Procedure Manual* §6.2.

³ *See* Va. Code § 2.2-3003(A); *Grievance Procedure Manual* § 2.5.

⁴ *See id.*

⁵ Certainly, should the grievant desire to resign from employment with the agency, she would be free to do so and the outcome of this ruling would be unchanged.

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