

Issue: Compliance – Grievance Procedure (other issue); Ruling Date: October 13, 2016; Ruling No. 2017-4427; Agency: Virginia Museum of Fine Arts; 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 Virginia Museum of Fine Arts
Ruling Number 2017-4427
October 13, 2016

The Virginia Museum of Fine Arts (the agency) seeks a compliance ruling concerning the grievant's September 30, 2016 grievance.

FACTS

On September 30, 2015, the grievant, through counsel, initiated a grievance directly with the Office of Employment Dispute Resolution (EDR), utilizing the Dismissal Grievance Form A to challenge his separation from employment. In its response, the agency asserts that the grievant's separation from employment does not constitute a "dismissal" under the provisions of the *Grievance Procedure Manual* and accordingly, the grievant is out of compliance with the grievance procedure.

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 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 regarding the issue of alleged noncompliance.

The *Grievance Procedure Manual* defines "dismissals" as terminations due to formal discipline or unsatisfactory job performance.² In this instance, the grievant's separation from employment resulted from his failure of a fitness for duty examination. We agree with the agency that the grievant's separation from employment does not constitute a "dismissal" as defined by the *Grievance Procedure Manual*, and accordingly, this grievance is not eligible for the dismissal grievance process. The grievant may, however, challenge his separation through the expedited grievance process.

Consistent with this analysis, this ruling will also address the timeliness of the grievance to challenge the grievant's separation from employment. EDR has consistently held that a

¹ *Grievance Procedure Manual* §6.2.

² Va. Code § 2.2-3003(A); *Grievance Procedure Manual* § 2.5.

grievance initiated in a timely manner but with the wrong management representative will not bar a grievance for noncompliance.³ Rather, the remedy in such a situation is either for management to provide the grievance paperwork to the appropriate step-respondent or return the grievance to the grievant for submission to that step-respondent. In either case, for purposes of timeliness, the initiation date of the grievance will be considered the date it was submitted initially. EDR views using the wrong grievance form or attempting to use the dismissal grievance process where there is not a right to do so as noncompliance of a similar nature that should be remedied in the same manner. Thus, the grievant is directed to resubmit his grievance on a Grievance Form A – Expedited Process to the agency **within five workdays of receipt of this ruling**. Once received, the agency must proceed with the applicable management steps of the grievance procedure. There is not a basis to close this grievance for noncompliance as it was simply directed to the wrong location, but was filed timely.

EDR's rulings on matters of compliance are final and nonappealable.⁴



Christopher M. Grab
Director
Office of Employment Dispute Resolution

³ *E.g.*, EDR Ruling No. 2011-2692; EDR Ruling No. 2007-1686; EDR Ruling No. 2006-1114; EDR Ruling No. 2001-195; EDR Ruling No. 99-007.

⁴ *See* Va. Code §§ 2.2-1202.1(5); 2.2-3003(G).