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COMPLIANCE RULING

In the matter of the Department of Behavioral Health and Developmental Services
Ruling Number 2020-4994
October 3, 2019

The Department of Behavioral Health and Developmental Services (the “agency”) seeks a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”)¹ concerning the grievant’s September 19, 2019 grievance.

FACTS

On September 19, 2019, the grievant initiated a grievance directly with EDR, using a Grievance Form A – Dismissal Grievance, to challenge his separation from employment. In 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.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 regarding the issue of alleged noncompliance.

The *Grievance Procedure Manual* defines “dismissals” as terminations due to formal discipline or unsatisfactory job performance.³ In this instance, the grievant was removed due to

¹ The Office of Equal Employment and Dispute Resolution has separated into two office areas: the Office of Employment Dispute Resolution and the Office of Equity, Diversity, and Inclusion. While full updates have not yet been made to the *Grievance Procedure Manual* to reflect this change, this Office will be referred to as “EDR” in this ruling. EDR’s role with regard to the grievance procedure remains the same.

² *Grievance Procedure Manual* § 6.2.


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

circumstances that prevented him from performing his job.⁴ 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.⁵

Consistent with this analysis, this ruling will also address the timeliness of the grievance challenging the grievant's separation from employment. EDR has consistently held that a grievance initiated in a timely manner but with the wrong management representative will not bar a grievance for noncompliance.⁶ 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. Accordingly, 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 has forwarded the original grievance paperwork to the agency to be addressed using the expedited process. The agency is directed to contact the grievant to schedule the single management step meeting **within five workdays of receipt of the grievance paperwork.**⁷

EDR's rulings on compliance are final and nonappealable.⁸



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⁴ See DHRM Policy 1.60, *Standards of Conduct*, § H (stating that "[a]n employee unable to meet the working conditions of his or her employment . . . may be removed" under certain circumstances).

⁵ *Grievance Procedure Manual* § 3.4 (stating that the expedited process may be used in cases involving "a separation not considered a "dismissal" . . . , demotion, suspension without pay, or any other action that results in an actual loss of wages").

⁶ E.g., EDR Ruling No. 2013-3400; 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.

⁷ *Grievance Procedure Manual* § 3.4. As the originally used dismissal grievance form does not provide space for the single management step response and qualification decision, the parties should use a blank second page of the expedited grievance form to complete the remaining steps of this grievance as they occur.

⁸ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).