

Issue: Compliance/Harassment by agency, Multiple Grievances; Ruling Date: October 30, 2002; Ruling #2002-079, 102, 113, 120; Agency: Department of Juvenile Justice; Outcome: Grievances properly closed administratively; no harassment.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Juvenile Justice/ No. 2002-079, 102, 113, 120
October 30, 2002

The grievant and the Department of Juvenile Justice (DJJ) have requested a compliance ruling on whether his three grievances with the agency constitute harassment. In those grievances, the grievant claims that he is working in a hostile work environment and requests a transfer to another position. DJJ has administratively closed all grievances, claiming that the grievant, with a co-worker, is using the grievance procedure as a means to harass management or otherwise impede the operations of the agency. For the following reasons, this Department finds that the grievances do not constitute harassment. However, their administrative closure was proper on other grounds.

FACTS

The grievant is employed at DJJ. On October 9, 2001, the grievant offered his written report and testimony in court during the judicial review of a cadet under his care. At the conclusion of the judicial review, management received several complaints from court spectators about the content of the grievant's report and testimony. On October 11, 2001, the grievant was verbally reprimanded by management about the poor condition of the cadet's file, and the assessments and recommendations that he made in court. During this meeting, the Superintendent threatened the grievant, and made inappropriate hostile remarks, for which he later apologized.¹

On October 15, 2001, the grievant grieved this hostile meeting. (Grievance 1). The Department of Employment Dispute Resolution (EDR) did not qualify the grievance for hearing and the decision was upheld by the circuit court on March 4, 2002. The grievant initiated a second grievance (Grievance 2) on April 3, 2002, alleging that DJJ improperly failed to provide the circuit court with a complete grievance record during his appeal of Grievance 1.² The agency administratively closed Grievance 2 on April 11, claiming that it was duplicative and an attempt to harass the agency.

¹ See second step response, Grievance 1.

² The grievant claims that the agency failed to provide the court with a document, which the grievant titles "Whistleblower's Act" summation. The grievant had sent that document originally to EDR during the

The grievant initiated a third grievance (Grievance 3) on April 22 challenging the administrative closing of Grievance 2. The grievant reiterated his concerns that he was working in a hostile work environment, citing stress-related health problems and the “continuous claim of [his] need to [transfer].”³ The agency administratively closed this grievance, claiming that it duplicated the issues of Grievance 1 and that it was a means to harass DJJ. On May 13, the grievant filed Grievance 4, which expresses frustration over the closed grievances, and asks for a thorough explanation as to why they were closed and clarification as to which process he should use to seek resolution regarding his concerns.

The grievant’s co-worker has also filed numerous grievances with DJJ, citing similar issues. DJJ claims that the two grievants have collaborated in the filing of their grievances for the purpose of harassing management or otherwise impeding the efficient operations of the agency. Both the grievant and the agency have requested a ruling on whether these grievances constitute harassment and whether they were properly administratively closed.

DISCUSSION

Harassment

The Commonwealth’s policy, “as an employer, [is] to encourage the resolution of employee problems and complaints.”⁴ To that end, the General Assembly has determined that “the grievance procedure shall afford an immediate and fair method for the resolution of employment disputes that may arise between state agencies and those employees who have access to the procedure.”⁵ However, “[e]mployees’ rights to pursue grievances shall not be *used to harass or otherwise impede* the efficient operations of government.”⁶ Accordingly, an employee who uses his grievance or grievances to harass or impede the operations of an agency is out of compliance with the grievance procedure.⁷

A finding of harassment may be supported by direct or circumstantial evidence, but may be inferred only when the surrounding facts and circumstances would compel a reasonable fact-finder to reach such a conclusion with substantial certainty. While neither the number, timing, frivolous nature of the grievances, nor the related burden to the agency are controlling factors in themselves, those factors could, in some cases, support an inference of harassment cumulatively or in combination with other factors.

EDR’s qualification review of Grievance 1. However, documents received as part of a qualification review do not automatically become part of the grievance record.

³ Memorandum, dated May 7, 2002, to the Director of EDR from the grievant.

⁴ Va. Code § 2.2-3000(A).

⁵ *Id.*

⁶ Va. Code § 2.2-3003(C)(emphasis added).

⁷ *Grievance Procedure Manual* § 2.4, pages 6-7.

Accordingly, whether an employee has used the grievance procedure to harass or impede an agency's operations must be determined on a case-by-case basis.

In this case, the grievances filed by the grievant and his co-worker are numerous and undoubtedly impose additional administrative work upon the agency. However, DJJ presents insufficient evidence that the grievant and his co-worker have used the grievance procedure to harass or otherwise impede its operations. Accordingly, this Department cannot conclude with substantial certainty from the surrounding facts and circumstances that the grievant used the grievance procedure to harass or otherwise impede the efficient operations of DJJ.

Grievance 2

In his grievance filed on April 3, the grievant alleges that a document did not reach the circuit court during his appeal of EDR's qualification decision in Grievance 1. The agency closed the grievance, claiming that it was duplicative and merely an attempt to prolong the life of Grievance 1. While we find that the two grievances are not duplicative,⁸ we find as a matter of compliance that the agency's administrative closure of this grievance was proper.

Under statute and the Grievance Procedure Manual, a grievant's dissatisfaction with the agency's transmittal of a grievance record to the circuit court is to be brought before the court for resolution, and not through the filing of yet another grievance. Indeed, in reviewing a qualification appeal, a circuit court may hear "such additional evidence as may be necessary to resolve any controversy as to the correctness of the record"⁹ and may receive additional evidence "in its discretion."¹⁰ Here, the grievant informed that court that the document at issue was missing. The grievant states that the judge "ignored the evidence of the document titled 'Whistle Blowers Act,'"¹¹ thus it appears that the court, in accordance with its discretion, determined that the document was not necessary and chose not to review it. Because the grievant's concern regarding the whereabouts of the "Whistleblower's Act" document was a matter for the court to decide, is not an appropriate issue to be addressed through the grievance procedure. Therefore, this grievance is out of compliance with the grievance procedure and its administrative closure was appropriate.

Grievances 3 and 4

⁸ Grievance 1 challenged the hostile meeting between the grievant and the Superintendent, while Grievance 2 challenges DJJ's alleged failure to provide a complete grievance record to the circuit court.

⁹ *Grievance Procedure Manual* § 4.4, page 12; *see also* Va. Code § 2.2-3004(E).

¹⁰ Va. Code § 2.2-3004(E); *see also* *Grievance Procedure Manual* § 4.4, page 12.

¹¹ Grievance Form A, filed April 3, 2002.

Grievance 3, filed on April 22, challenges a management step response to Grievance 2.¹² The grievance reiterates the grievant's desire to transfer, based on "the hostile meeting between [the] superintendent" and the grievant.¹³ This hostile meeting was also the subject of Grievance 1. The grievant claims that his fear of another hostile meeting has caused health problems, as well as work-related problems, and cites to other employees who were allowed transfers due to stress.

Grievance 4, filed on May 13, challenges DJJ's response to Grievance 3, in which the agency administratively closed Grievance 3. It appears that Grievances 3 and 4 simply reiterate the grievant's state of mind following his meeting with his superintendent (the subject of Grievance 1) and do not state any new issues. Therefore, these grievances are duplicative of Grievance 1 and are out of compliance with the grievance procedure.

Moreover, under the grievance procedure, the conduct of parties during the resolution steps is ordinarily a matter of procedural compliance that should be addressed through compliance procedures and not through the filing another grievance. When a grievance is administratively closed due to noncompliance, the "employee may request, within 5 workdays of receiving notice that the grievance will be closed, that EDR decide whether the grievance is in compliance and can proceed."¹⁴ In this case, the grievant did not challenge the agency actions through a compliance ruling request; instead he filed new grievances. This practice is not in compliance with the grievance procedure.

For the above reasons, Grievances 3 and 4 will remain administratively closed.

In sum, this Department finds that Grievances 2, 3, and 4 initiated on April 3, April 22, and May 13, 2002 are out of compliance with the grievance procedure, and may remain administratively closed. This Department's rulings on matters of compliance are final and nonappealable.¹⁵

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Director

Leigh A. Brabrand

¹² Grievance 3 responds to the Second Step Respondent's letter, dated April 11, 2002, which administratively closed Grievance 2.

¹³ See Memorandum, dated May 7, 2002, to the Director of EDR from the grievant.

¹⁴ *Grievance Procedure Manual* § 6.2, page 17.

¹⁵ Va. Code § 2.2-1001(5).

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