

Issue: Compliance-Other; Ruling Date: July 26, 2002; Ruling #2002-147; Agency: University of Virginia; Outcome: Agency in compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of University of Virginia/ No. 2002-147
July 26, 2002

The grievant has requested a compliance ruling in her January 15, 2002 grievance with the University of Virginia (UVA or University). The grievant claims that the university violated the grievance procedure and her confidentiality when it misplaced her original grievance Form A and attachments. As relief, she requests a ruling in her favor on the substantive merits of her grievance.

FACTS

The grievant is a Fiscal Technician Senior with UVA Medical Center. She received a Group I written notice on December 17, 2001 for disruptive and rude behavior. The written notice followed an incident on December 11 where the grievant allegedly displayed "a very public show of displeasure" that she was not notified when an administrator was out sick.

The grievant challenged the written notice in a grievance filed on January 15, 2002, alleging retaliation and harassment by her supervisor. After completing the third management resolution step, the grievant hand-delivered her original grievance Form A with attachments to the University President's office on June 28, requesting qualification for a hearing. When she did not receive a timely response, she notified the President of noncompliance on July 10. The grievant then learned that her original grievance Form A with attachments had been lost. After a thorough search of the President's office, the University determined that the original Form A and attachments were, indeed, lost and reconstructed the Form A and attachments using copies from the third resolution step. On July 18, UVA qualified the grievance for a hearing.

On July 11, the grievant notified UVA that it had violated the grievance procedure by misplacing her original Form A. She requested a ruling from this Department on July 19 when the University failed to produce the original Form. She argues that the University's loss of her original Form A should result in a ruling from this Department on the substantive merits of her grievance and the reversal of her Group I written notice.

DISCUSSION

The grievance procedure requires that parties first communicate with each other about the noncompliance, and resolve any compliance problems voluntarily, without this Department's involvement. Specifically, a party claiming noncompliance must notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance. If the agency fails to correct the alleged noncompliance, the grievant may request a compliance ruling from this Department.¹ Should this Department find that the agency violated a substantial procedural requirement without just cause and that the grievance presents a qualifiable issue, this Department *may* resolve the grievance in the grievant's favor.²

In this instance, the grievant notified the University of its failure to provide a timely qualification decision, which the University corrected on July 18 by issuing a decision qualifying the grievance for a hearing, thus coming back into compliance on the qualification matter. Moreover, while the grievant's frustration with the University's loss of her original Form A and attachments is understandable, there is no evidence that the University's error was the result of anything other than carelessness. There is no evidence that UVA improperly disclosed any confidential personal information that may have been contained in the original Form A, or that it disposed of the Form A in an effort to impede the grievance. When, as here, there is no evidence of bad faith or improper disclosure of confidential personal information, a party's inadvertent loss of an original Form A, by itself, does not constitute a substantial procedural violation of the grievance procedure, particularly where an adequate copy of the original Form A and attachments have been made readily available.

Therefore, although the loss of the original grievance Form A and attachments was unfortunate, a decision in the grievant's favor on the basis of procedural noncompliance is not warranted in this case, and this grievance will proceed to a hearing for a decision on the merits. This Department's rulings on matters of compliance are final and nonappealable.³

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¹ *Grievance Procedure Manual* § 6.3, page 17.

² *Id.*

³ Va. Code § 2.2-3003(G).