

Issue: Compliance/mistaken conclusion of grievance; Ruling Date: May 11, 2004;
Ruling #2004-696; Agency: Department of Mental Health, Mental Retardation and
Substance Abuse Services; Outcome: agency in compliance by administratively closing
grievance



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Mental Health, Mental Retardation, and Substance Abuse
Services/ No. 2004-696
May 11, 2004

The grievant has requested a compliance ruling in her February 9, 2004 grievance with the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS). The grievant claims that she mistakenly concluded her grievance after her second management resolution step and wishes to correct her mistake and advance her grievance to the qualification stage.

FACTS

The grievant was a Human Service Care Worker with DMHMRSAS until her termination on January 22, 2004. On January 17, 2004, the grievant and a co-worker engaged in a conversation about a personal matter which escalated into a physical altercation. The grievant claims that the co-worker attacked her by pulling out the grievant's hair and possibly punching the grievant in the face.¹ The grievant further claims that she did not fight back and only attempted to remove herself from the situation.

The agency asserts that it investigated the January 17 incident and concluded that the grievant engaged in a verbal exchange with the co-worker, knowing that it was a "potentially explosive matter."² The agency further determined that there was "sufficient evidence that a physical altercation constituting a 'fight' occurred" involving the grievant.³ The agency issued the grievant a Group III Written Notice with termination on January 22, 2004.

The grievant challenged the Written Notice and termination in a February 9, 2004 expedited grievance. On February 27, 2004, at the conclusion of her second management resolution step, the grievant checked the box on her Grievance Form A that reads "I conclude my grievance and am returning it to the Human Resources Office." The grievant claims that her intention was to continue the grievance and that she mistakenly

¹ The grievant does not recall being punched in the face but recalls that her eye was bruised following the altercation.

² Second Step Response, page 2, dated February 23, 2004.

³ Second Step Response, page 3, dated February 23, 2004.

checked the wrong box on her Form A. The grievant states that she attempted to correct her mistake on March 8, 2004 and notified the agency in writing of her intent to advance her grievance to the qualification stage. The agency allowed the grievant to check the box reading "I request qualification of my grievance" on a *copy* of the Form A. However, on March 10, the agency notified the grievant that her grievance would remain concluded, stating that "it would not be appropriate to allow [the grievant] to reverse [her] original designation based on a request made 10 days after the grievance was closed."⁴

The grievant requested a compliance ruling from this Department on whether her grievance should be re-opened. She claims that the reason for her error was "the trauma of the process and the technical challenges inherent in some of the phrases." She states further that the situation was "compounded by the complex nature of the grievance process and the typical lack of any support, goodwill, sincerity, neutrality and resource from the human resource office at [the facility]."⁵ Specifically, the grievant claims that, when she attempted to return her Form A, the secretary in the Human Resources office began arguing with her, telling her that she was late in returning the Form A. The grievant stated during this Department's investigation that she became flustered and quickly checked a box on the Form A. As evidence that she intended to advance, not conclude, her grievance, the grievant stated that the secretary would not have questioned her about the timeframe if she had not been continuing her grievance.

DISCUSSION

Under the grievance procedure, grievances are initiated with agency management and proceed through three management resolution steps.⁶ However, grievances involving termination or any other loss of pay "may be initiated with the second-step respondent under the Expedited Process. Within 5 workdays of the second-step response, the employee may request the agency head to qualify the grievance for a hearing."⁷ In this case, the grievant is challenging her termination from DMHMRSAS and initiated her grievance with the second-step respondent using the Expedited Process.

The grievance procedure states that "within 5 workdays of receiving the [second-step] response, the employee must (1) request on the grievance form that his grievance be qualified for a hearing and submit the form to the agency head; or (2) indicate on the grievance form his intention to conclude the grievance and submit the form to the Human Resource Office."⁸

The Form A is an official grievance document used by the parties to communicate throughout the grievance process. For example, employees initiate their grievances using

⁴ Letter to Grievant from Human Resources Manager, dated March 10, 2004.

⁵ Letter to EDR Director from Grievant, dated April 3, 2004.

⁶ *Grievance Procedure Manual* § 2.1, page 5.

⁷ *Grievance Procedure Manual* § 2.4, page 7.

⁸ *Grievance Procedure Manual* § 3.3, page 10.

the Form A, stating the issues grieved, the facts supporting this grievance, and the relief requested.⁹ Employees are encouraged to use great care in completing the Form A, because additional claims may not be added once the grievance is initiated.¹⁰ Moreover, employees use the Form A to communicate whether (1) they are claiming discrimination or retaliation by their step respondents or (2) their grievances involve a loss in pay, thus allowing them to use the Expedited Process.¹¹ During the management resolution steps, an employee “indicate[s] *on the grievance form* his intention to continue” to the next management resolution step or “indicate[s] *on the grievance form* his intention to conclude the grievance.”¹²

Agencies also rely on the Grievance Form A to communicate with employees during the grievance process. If a grievant is out of compliance with the grievance procedure, “management may notify the employee, *using the “Form A,”* that the grievance will be administratively closed due to noncompliance.”¹³ Moreover, step respondents are responsible for entering the date of receipt of the grievance and issue a written response using the Form A.¹⁴

The Grievance Form A is of paramount importance during the grievance procedure. Because the grievant, the agencies, and this Department rely on the Form A to ascertain the intent of the parties, it is incumbent on the parties to clearly express their intentions on the Form A. An inquiry into the objective intent of the parties beyond that which is expressed on the Form A would be impracticable. Therefore, this Department can only rely on the plain language of the Grievance Form A when determining the intent of a party.

In this case, the question is not whether this Department accepts the grievant’s claim that she checked the box to conclude her grievance in error, but whether the agency acted in accordance with the grievant’s instructions as communicated on the Form A. An examination of Grievance Form A alone reveals an intention to conclude her grievance. It does not appear that the Form A is inherently confusing.¹⁵ Further, this Department has long held that it is incumbent upon the employee to know of her rights and obligations under the grievance procedure. If an employee is confused or has questions regarding the grievance procedure, this Department’s AdviceLine is available toll-free to

⁹ *Grievance Procedure Manual* § 2.4, page 6.

¹⁰ *Id.*

¹¹ *Grievance Procedure Manual* § 2.4, page 7.

¹² *Grievance Procedure Manual* §§ 3.1, 3.2, and 3.3, pages 8-10 (emphasis added).

¹³ *Grievance Procedure Manual* § 2.4, page 7 (emphasis added).

¹⁴ *Grievance Procedure Manual* §§ 3.1, 3.2, and 3.3, pages 8-10.

¹⁵ On the contrary, the Expedited Grievance Form A completed by the grievant clearly poses four options to the grievant at the conclusion of the second management resolution step: “(1) I conclude my grievance and am returning it to the Human Resources Office; (2) I request qualification of my grievance; (3) I want the agency head to determine whether I have access to the grievance procedure; or (4) I want EDR to rule on whether I initiated my grievance in 30 calendar days.”

provide guidance on procedural issues to any party to a grievance.¹⁶ Moreover, there is insufficient evidence that the grievant was coerced into checking the incorrect box.¹⁷ Accordingly, this Department concludes that, based on the plain reading of the Grievance Form A, the agency properly concluded the grievant's February 9 grievance. This Department's rulings on matters of compliance are final and nonappealable.¹⁸

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¹⁶ Both the Grievance Procedure Manual and the Grievance Form A display this Department's telephone number.

¹⁷ Although the grievant claims that she felt "rushed" to check a box because the secretary was arguing with her, there is insufficient evidence that the grievant was prohibited from checking the correct box, advancing her grievance to the qualification stage. Rather, it appears that, in her haste, the grievant may have mistakenly checked the box concluding her grievance. Even if the secretary was arguing with the grievant, the grievant's error cannot be attributed to the agency or its employees.

¹⁸ Va. Code § 2.2-1001(5).