

Issue: Compliance/Grievance Procedure/ resolution steps; grievant claims relief promised in resolution steps not given; asks to reopen a closed grievance; Ruling Date: August 10, 2004; Ruling #2004-751; Agency: Department of Mental Health, Mental Retardation and Substance Abuse Services; Outcome: grievance will be reopened.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Department of Mental Health, Mental Retardation,
And Substance Abuse Services
Ruling Number 2004-751
August 10, 2004

The grievant has requested that this Department rule on whether he may re-open his May 26, 2004 grievance with the Department of Mental Health, Mental Retardation, and Substance Abuse Services ("DMHMRSAS or agency"). For the reasons set forth below, this Department concludes that the grievance may be reopened.

FACTS

The grievant was issued a Group III Written Notice and a 10-day suspension for alleged patient abuse. The grievant challenged the Notice and suspension by initiating an expedited grievance on May 26, 2004. As stated on his Form A, he sought to have the Group III Notice for patient abuse reduced to a Group II for "failure to comply with established written policy." In addition, the grievant sought training in patient handling techniques which would address his physical impairment.

On June 2, 2004, following the second-step meeting, the second-step respondent stated on the Grievance Form A that "I support relief granted for reduction of Group III to Group II and support provision of TOVA training for next scheduled training which can be coordinated for service." Upon receipt of his grievance, the grievant checked the box on the Grievance Form A which states: "I conclude my grievance and am returning it to the Human Resources Office."

The following day, the grievant claims that he was informed by the Human Resources Director that although the Group III Notice was being reduced to a Group II, the language contained in the Notice would not be changed to "failure to comply with established written policy" as he had requested as relief on his Form A. On June 10, 2004, the grievant wrote this Department to request that he be allowed to reopen his grievance because the relief granted was not the relief requested, and, according to him, his decision to conclude his grievance had been based on "incomplete and misleading information."

DISCUSSION

By statute, this Department has been given the power to establish the grievance procedure, promulgate rules for conducting grievance hearings, and “[r]ender final decisions...on all matters related to procedural compliance with the grievance procedure.”¹

As noted, the grievant asserts that he closed his grievance based on “incomplete and misleading information.” This Department has not been presented with any evidence that management intended to mislead the grievant. It appears, however, as though there was no understanding between the parties regarding the language that would be used in the substitute Group II Notice. The parties agree that the issue of proposed wording for the Written Notice was never discussed at the second-step meeting. And while the second-step response does not specifically address proposed language for the reduced Written Notice, it does state that the second step respondent “support[s] relief granted for reduction of Group III to Group II.” That statement is somewhat puzzling--it is not obvious why the second-step respondent would say that he “supports the relief granted” when he is the individual granting the relief. More importantly, however, based upon the second step response, it was not unreasonable for the grievant, in concluding his grievance, to rely upon an assumption that the relief granted included the relief sought. In light of that reasonable assumption, and given the importance of the patient abuse issue and charge to both parties, this Department holds that the grievant may reopen his grievance.²

By copy of this ruling, the grievant and the agency are advised that the grievant has 5 workdays from receipt of this ruling to either conclude the grievance or request to advance to the next resolution step. This Department’s rulings on matters of compliance are final and nonappealable.³

Claudia T. Farr
Director

¹ Va. Code § 2.2-1001(2), (3), and (5).

² This is not a case of a party’s claim that he mistakenly marked the wrong box on the Form A. See, e.g., EDR Rulings Nos. 2004-696 and 2004-611. In the present case, it is undisputed that the grievant fully intended to mark his grievance as concluded. Several factors set this case apart from other rulings and weigh the balance in favor of reinstatement: (i) the grievant’s reasonable reliance, in concluding his grievance, on the assumption that the relief he requested on his Form A had been granted by the second step respondent; (ii) the existence of a new material fact that had not been available to him at the time of the conclusion of his grievance, i.e., that the “patient abuse” language remained on his reduced Written Notice; and (iii) the grievant’s prompt action to reinstate his grievance after learning of the remaining “patient abuse” language.

³ See Va. Code § 2.2-1001(5).