

Issue: Compliance/Grievance procedure issue; Discipline/property/records misuse;
Ruling Date: September 26, 2005; Ruling #2006-1113; Agency: State Compensation
Board; Outcome: both agency and grievant in compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the State Compensation Board
Ruling Number 2006-1113
September 26, 2005

The grievant has requested a compliance ruling regarding his July 29, 2005 grievance initiated with the State Compensation Board (SCB).

FACTS

The grievant worked for the Department of Transportation as a General Administration Manager II until June 30, 2005. On or about June 16, 2005, the grievant gave VDOT a two-week advance notice of his intention to resign from his position. The grievant had been offered and accepted a position with the SCB.

On June 30, 2005, the grievant's last day of work with VDOT, the VDOT Chief Financial Officer presented the grievant with a Group III Written Notice with termination from VDOT. On July 29, 2005, the grievant initiated a grievance challenging the Group III and termination with his immediate supervisor at the SCB. His supervisor responded by stating that he could provide no relief. Moreover, he administratively closed the grievance asserting that the grievance was out of compliance with § 2.4 (2) of the *Grievance Procedure Manual* which states that a grievance must "arise in the agency in which the employee works."

In response to the SCB's closure of his grievance, the grievant seeks a compliance ruling from the Director of this Department. He asserts that the fact that he accepted a position with another state agency should not prevent him from challenging the Written Notice through the grievance process.

DISCUSSION

The grievance procedure provides that an employee's grievance must arise in the agency in which the employee works.¹ This Department has long held that this provision requires that an employee must initiate his grievance with his employing agency.² In this case, however, the issue being grieved, a Group III Written Notice with termination, involves discipline issued by VDOT and thus arose entirely within VDOT. Moreover, if the grievant had not accepted employment with another state agency, he would have been free to challenge the discipline with VDOT anytime during the 30 calendar day period following his June 30th termination. To effectively penalize the grievant by denying him the opportunity to challenge the discipline, merely because he decided to continue to work for the Commonwealth, would be an inequitable and untenable result. Accordingly, the grievant may initiate a grievance challenging the discipline with VDOT within 30 calendar days of the **date of issuance of this ruling**.³ This Department's rulings on matters of compliance are final and nonappealable.⁴

Claudia T. Farr
Director

William G. Anderson, Jr.
EDR Consultant

¹ *Grievance Procedure Manual*, § 2.4(2).

² *See* EDR Rulings #2002-020 and #2003-530.

³ Allowing the grievant to initiate a grievance with VDOT is not without precedent. On October 9, 1997, a state employee with access to the grievance procedure began work at a new agency. The new agency requested the former agency to complete and forward a copy of his 1997 performance evaluation. A copy was provided on January 15, 1998. The grievant formally appealed the evaluation to the reviewer at the former agency and when he did not receive a timely response, he grieved the evaluation with the former agency. The former agency objected, in part, on the basis that the grievance had been initiated with the former agency after the grievant had begun work at the new agency. This Department allowed the employee to proceed with his grievance, with the former agency, on basis that only the former management officials could provide the grievant with redress. The same situation applies in the instant case—only VDOT management can provide redress regarding discipline issued by VDOT. This Department also has long held that a grievance timely filed but initiated with the wrong individual will not be barred on the basis of timeliness. Accordingly, the grievant has 30 days **from the date of this ruling** to initiate his grievance with VDOT.

⁴ Va. Code § 2.2-1001 (5).