

Issue: Compliance: Grievance Procedure – Other Issue; Ruling Date: April 20, 2007;
Ruling #2007-1631; Agency: Virginia Department of Health; Outcome: Agency not in
compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Health
Ruling Number 2007-1631
April 20, 2007

The grievant has requested a compliance ruling regarding her March 2, 2007 grievance with the Department of Health (the agency). The agency asserts that, based upon notations on the Form A, the grievant intended to conclude the grievance. For the reasons discussed below, the grievance must be permitted to proceed.

FACTS

The grievant initiated this grievance to challenge her termination from employment with the agency. The agency received the grievant's Form A on March 7, 2007.¹ On the Form A, the grievant filled in Section I, but also checked the boxes and signed on the "Employee's Signature" line in each section of the Form A for every management step. Some of the boxes the grievant checked were those marked "I conclude my grievance and am returning it to the Human Resources Office." The agency determined that the grievant intended to conclude the grievance and stated that it was closed. The grievant has now requested a compliance ruling from this Department.

DISCUSSION

This Department recognizes that the Grievance Form A is an official grievance document used by the parties to communicate throughout the grievance process and as such, is of paramount importance during the grievance procedure. Because the grievant, agencies, and this Department rely on the Form A to ascertain the intent of the parties, it is incumbent on the parties to clearly and accurately express their intentions on the Grievance Form A. In this case, however, although the grievant checked the box that she intended to conclude the grievance, no reasonable observer can interpret that as her actual intention.

¹ The grievant incorrectly first sent the Form A to this Department. However, after contacting the grievant, this Department forwarded the grievance package to the agency on March 6, 2007.

The grievant mistakenly filled out every employee portion of the Form A prior to having her grievance addressed at any of the management steps. The boxes on the Form A are for a grievant to check in response to whatever reply a grievant receives from the step-respondent. Therefore, having yet to receive a response to which she could reply in these sections, it does not follow that the grievant was intending to conclude the grievance in checking these boxes.² It is simply incomprehensible that the grievant would have initiated a grievance merely to conclude it at the exact same moment.³ As such, simply based upon the Form A, the only reasonable interpretation of the grievant's objective intent was that she intended to initiate a grievance; not to file a Form A to conclude a grievance.⁴

For these reasons, the grievance must be permitted to proceed. The grievant's current notations in the management steps sections of the Form A should be stricken so that the grievant may be permitted to fill out those sections properly once the step-respondents actually respond to the grievance. The agency will not be permitted to rely on the grievant's original erroneous notations in those sections. If either party is unclear of how to proceed with the grievance process, they should contact EDR's toll-free AdviceLine at 1-888-232-3842 for assistance.

CONCLUSION

By copy of this ruling, the parties are advised that within five workdays of the receipt of this ruling, the second step-respondent must respond to the grievance.⁵ This Department's rulings on matters of compliance are final and nonappealable.⁶

Claudia T. Farr
Director

² It appears that the grievant was using the phrase "conclude my grievance" to indicate that she was at the end of completing the form. In her attachment to the Form A, she ended with that phrase after discussing all the issues she was raising.

³ Moreover, when this Department forwarded the Form A to the agency, the "erroneous notations" were mentioned along with the grievant's apparent intention to initiate the expedited grievance based on a conversation with the grievant.

⁴ This Department has ruled previously in cases, such as EDR Ruling No. 2004-696 and EDR Ruling No. 2004-611, that both the grievant and the agency will be bound by notations made on the Form A. EDR held in those cases that subsequent attempts to change the notations would be unfair to the opposing parties. However, this case differs from those previous matters because of the clear intent of the grievant to initiate the grievance, which will not be overcome by the mistakenly checked boxes. *See also* EDR Ruling No. 2007-1472.

⁵ Although the grievant utilized a Form A for the normal grievance process, she checked the box for "Expedited Process." In an expedited grievance, the first management step is with the second step-respondent. *Grievance Procedure Manual* § 2.4.

⁶ Va. Code § 2.2-1001(5).