

Issue: Compliance – Grievance Procedure (Other Issue); Ruling Date: March 31, 2008; Ruling #2008-1921; Agency: Department of Social Services; Outcome: Grievant In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF THE DIRECTOR

In the matter of Department of Social Services
Ruling No. 2008-1921
March 31, 2008

The grievant has requested a ruling on whether her January 3, 2008 grievance is in compliance with the grievance procedure. The Department of Social Services (DSS or the agency) claims that the grievant does not have access to the grievance procedure because the grievant has previously pursued the same issues through another state process or grievance. For the reasons set forth below, this Department finds that the January 3, 2008 grievance is not duplicative and therefore not out of compliance with the grievance procedure.

FACTS

The grievant is employed with the agency as an Information Technologist Specialist II. In September 2007, the grievant was “re-slotted” as an Advanced Programmer/Analyst, following an August 2007 decision by an EDR Hearing Officer directing the agency “to re-evaluate whether Grievant should be slotted as Intermediate, Advanced, or Expert.”¹ This hearing decision addressed a June 2006 grievance in which the grievant challenged her slotting as “Intermediate” rather than “Expert.”² The grievant also apparently initiated a complaint with the Office of Equal Employment Services (OEES) on January 23, 2006, alleging that the agency had discriminated against her on the basis of her gender.

On January 3, 2008, the grievant initiated a grievance challenging what she alleges is a “significant pay disparity” between her salary and that of her “Advanced male counterparts.” On January 10, 2008, the first-step respondent advised the grievant that her grievance had been closed for noncompliance with the grievance procedure—specifically, that the pay disparity issue raised by the grievant had already been pursued through another state process or grievance. The grievant has now appealed the agency’s decision to this Department.

DISCUSSION

The *Grievance Procedure Manual* lists six requirements for the initiation of a grievance.³ The agency challenges the grievant's compliance with the fifth and sixth requirements--

¹ EDR Case Nos. 8589/8591, at 9.

² *Id.* at 1.

³ See *Grievance Procedure Manual* §2.4.

specifically, that a grievance must not raise issues which have been pursued through another state process or a previous grievance.

While we do not disagree that there are similarities between the grievant's claims in her previous grievance and her OEES complaint (in particular, that her pay had been affected by gender discrimination), the claims are not the same. In the grievant's earlier complaints, she challenges the alleged disparities in salary that existed prior to her being slotted as an "Advanced" employee. In her present grievance, she challenges the alleged salary disparity between herself and other Advanced employees. Because the grievant was not slotted as an "Advanced" employee until September 2007, any complaints prior to this time necessarily could not challenge whether such a pay disparity between Advanced employees is appropriate or whether, as the grievant alleges, is the result of discrimination. Accordingly, we find that the grievant's January 3, 2008 is not duplicative and may proceed through the management resolution steps. The parties should note, however, that this ruling has no bearing on the substantive merits of this grievance or its potential qualification for hearing.

CONCLUSION

The January 3, 2008 grievance is in compliance with the grievance process. The grievant has five workdays from her receipt of this ruling to either conclude or advance her grievance to the second-step respondent. This Department's rulings on matters of compliance are final and nonappealable.⁴

Claudia T. Farr
Director

⁴ Va. Code § 2.2-1001(5).