

Issue: Compliance – Grievance Procedure (Other Issue); Ruling Date: January 20, 2009; Ruling #2009-2191; Agency: Virginia Department of Transportation; Outcome: Grievant In Compliance.



COMMONWEALTH OF VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF THE DIRECTOR

In the matter of Department of Transportation
Ruling No. 2009-2191
January 20, 2009

The grievant has requested a ruling on whether her November 13, 2008 grievance with the Department of Transportation (the agency) is in compliance with the grievance procedure. The agency asserts that the grievant did not meet the rules for initiating a grievance because the grievant initiated a similar complaint with the Department of Human Resource Management's (DHRM) Office of Equal Employment Services (OEES). For the reasons set forth below, this Department determines that the grievance complies with the grievance procedure and may proceed.

FACTS

In her November 13, 2008 grievance, the grievant raises issues involving misapplication and unfair application of various policies, including short-term disability, long-term disability, the Family and Medical Leave Act, and return to work. She asserts that the dates the challenged management actions occurred were in October 2008. Prior to submitting this grievance, the grievant had also initiated a discrimination complaint with OEES regarding what appear to be similar issues. It appears that OEES received that complaint on September 23, 2008. Because the grievant had initiated such a complaint, the agency argues that the grievance was noncompliant with section 2.4 of the *Grievance Procedure Manual* and closed the grievance. The grievant now requests a compliance ruling.

DISCUSSION

To satisfy section 2.4 of the *Grievance Procedure Manual*, a grievance must "[n]ot have been pursued through another state process (for example, a formal discrimination complaint filed with the [OEES])."¹ Pursuant to this Department's Memorandum of Understanding with DHRM, an employee may not use the OEES complaint process and the grievance procedure to address "the same work-related action." Consequently, the management actions raised in the OEES complaint on September 23, 2008 are currently the domain of OEES to investigate and

¹ *Grievance Procedure Manual* § 2.4; see also *id.* § 1.3 ("An employee may not pursue both an OEES complaint and a grievance on the same matter.").

address. However, the November 13, 2008 grievance has challenged management actions that allegedly occurred in October 2008, which could not have been part of the grievant's OEES complaint initiated in September. As such, the grievance is raising different matters than those raised in the OEES complaint, though they do appear to be closely related. Because it cannot be said that the grievant's allegations were pursued through another state process in their entirety, the agency's claim of initiation noncompliance fails.

CONCLUSION

For the reasons discussed above, this Department has determined that the grievance dated November 13, 2008 is compliant with Section 2.4 of the *Grievance Procedure Manual* and must be permitted to proceed. The grievance must be returned to the appropriate step-respondent, who must respond to the grievance within five workdays of receipt of this ruling. This Department's rulings on matters of compliance are final and nonappealable.²

Claudia T. Farr
Director

² See Va. Code §§ 2.2-1001(5), 2.2-3003(G).