

Issue: Compliance – Grievance Procedure (Other Issue); Ruling Date: April 29, 2009; Ruling #2009-2283; Agency: University of Virginia Health System; Outcome: Agency Not In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the University of Virginia
Ruling No. 2009-2283
April 29, 2009

In EDR Ruling No. 2008-2052, this Department qualified the grievant's May 13, 2008 grievance against her former employer, the University of Virginia (UVA or the University), in which she challenged her allegedly involuntary resignation. In that Ruling, we explained,

Should the hearing officer find that the grievant's separation was involuntary, the hearing officer may offer only limited relief. The hearing officer can return grievant to work and the parties to the point at which the agency notified the grievant of its intent to terminate the grievant for her absences and presented the grievant with the option of resigning her position or being terminated. If the grievant chooses the resignation offer after full disclosure of the resignation terms and adequate time to consider her options, then such resignation would likely be considered voluntary and she would have no further access to grieve her resignation. If, on the other hand, she elects to reject the resignation offer and instead opts for a disciplinary termination, she may grieve the discipline within 30 **calendar** days of receipt of the formal discipline. Because formal discipline automatically qualifies for hearing, the grievant would have an opportunity to present her case to an impartial hearing officer who would decide whether the disciplinary action was warranted.

In an effort to avoid having two separate hearings, the University subsequently advised this Department that it wished to qualify the May 13th grievance for hearing. The grievant agreed to the University's request to qualify the grievance for hearing.

This Department addressed the University's request in Ruling No. 2009-2162. In that Ruling, we explained the procedural differences between having the grievant's claims addressed in one hearing instead of the two-hearing model this Department had

earlier directed. This Department then advised the parties that we would allow a single hearing in this matter, provided *both* parties continued to agree on a single hearing after being fully informed of the possible ramifications of such a decision. In accordance with our instructions in Ruling No. 2009-2162, the grievant has advised this Department that she objects to the single-hearing model. The University continues to request a single hearing.

As the parties have apparently been unable to agree to the single-hearing model, the two-hearing approach set forth in Ruling No. 2008-2052 will be utilized. With respect to the University's objections regarding any possible award of back pay or attorney's fees, the University may present those arguments to the hearing officer and subsequently to the EDR Director through the administrative review process.

This Department's rulings on compliance are final and nonappealable.¹

Claudia T. Farr
Director

¹ See Va. Code § 2.2-1001(5); 2.2-3003(G).