

Issue: Compliance – Grievance Procedure (Other Issue); Ruling Date: August 25, 2010; Ruling #2011-2722; Agency: University of Virginia; Outcome: Grievant In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the University of Virginia
Ruling No. 2011-2722
August 25, 2010

The grievant seeks a compliance ruling regarding her grievance with the University of Virginia (the University). In this case, the grievant submitted her January 14, 2010 grievance to challenge her 2009 performance evaluation. Following receipt of the first step response, the grievant submitted a reply containing certain language that eventually led to the grievant undergoing a fitness for duty exam. For the reasons discovered during the fitness for duty evaluation, the grievant has been out of work on disability. The grievant has sought to pursue her grievance to the second management resolution step, but the University has stated that the grievance process is “suspended” because the grievant is on short-term disability. The grievant requests a compliance ruling to allow her grievance to proceed.

This case presents a question of first impression for this Department: whether the grievance process must proceed when the grievant is on approved short-term disability, but nevertheless wishes to pursue her grievance. The answer to that question depends on the particular facts of each situation. That a grievant is on approved short-term disability does not mean that the grievance process is automatically stayed.

In this case, although this Department has not reviewed medical records, the results of the fitness for duty exam have apparently disallowed the grievant from returning to work for the University due to a psychological issue. In the absence of evidence to the contrary, we must defer to this assessment, and conclude that just as the grievant is currently unable to work due to a psychological issue, she may not currently be capable of pursuing her grievance. Therefore, this Department cannot find fault with the University’s initial decision to “suspend” the grievance process, and will not order the grievance to proceed at this time. However, if the grievant presents documentation from a medical professional supporting her fitness to continue with this grievance, this Department will reassess the matter and make a renewed determination.¹ At this time, the grievance process will remain “suspended” in this case.²

¹ Similarly, if the grievant presents such information to the University, the University is free to reinstate the grievance process if the information received provides satisfactory indication of the grievant’s ability to proceed.

² It is important to note that the subject-matter of this grievance, an annual performance evaluation challenge, is an issue separate and apart from the grievant’s short-term disability or her ability to return to work. Thus, whether the grievant is cleared to return to work does not depend on whether this grievance advances or is stayed.

This Department's rulings on matters of compliance are final and nonappealable.³

Claudia T. Farr
Director

³ See Va. Code § 2.2-1001(5), 2.2-3003(G).