

Issue: Compliance – Grievance Procedure (other issue); Ruling Date: March 10, 2011; Ruling No. 2011-2841; Agency: University of Virginia; Outcome: Grievant in Compliance, Agency in Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the University of Virginia
Ruling No. 2011-2841
March 10, 2011

In EDR Ruling No. 2011-2722, this Department addressed the suspension of the grievant's January 14, 2010 grievance by University of Virginia (the University). Based on the apparent results of a fitness for duty exam, it was determined that the grievant was not capable of pursuing her grievance.¹ Since that time, the grievant has obtained a letter from a clinical psychologist, indicating that she is fit for duty. As a result, the University has concluded that the grievance may be permitted to proceed. Therefore, the grievant's ruling request is largely moot.²

The University has additionally requested that when the grievance proceeds to the second step, the meeting that usually occurs at that step be conducted telephonically, not in person. The University has expressed concerns for the safety of its employees due to the grievant's apparent conduct prior to leaving employment. The grievant's conduct at issue is related to statements she made to certain University employees and the response she submitted in her grievance following the first step, which led to the determination that the grievant was unfit for duty.

Although this Department has not reviewed any medical records from the University, we understand the University's concerns and recognize that they can be respected here without unduly preventing the grievant from pursuing her grievance. The only stage impacted by the University's request is the second step meeting.³ The grievant has indicated that she would prefer to proceed with the face-to-face meeting. She feels that the issues involved are important enough such that a face-to-face meeting is necessary.

Though a face-to-face meeting is the normal process for the second step meeting,⁴ we cannot ignore the University's safety concerns in this case. Though we cannot determine that the University's safety concerns are founded, the information presented supports the reasonable need for caution. The grievant has allegedly made statements regarding a "day of reckoning" and

¹ EDR Ruling No. 2011-2722.

² To the extent the grievant's other grievances have been stayed as a result of EDR Ruling No. 2011-2722, those grievances should proceed as well. As such, if the agency has yet to respond to these grievances initially, it should do so **within five workdays of receipt of this ruling.**

³ This ruling does not address how a hearing would progress if this grievance were to qualify for a hearing.

⁴ See *Grievance Procedure Manual* § 3.2.

mentioned purchasing a gun for her protection. In addition, the fitness for duty exam by a forensic psychologist resulted in the apparent requirement for a course of psychotherapy due to the grievant's condition, which could involve issues that include anger, social isolation, and isolation that may lead to violence. Given these issues, the University's request for caution is understandable.

Further, the University has stated that the meeting can be conducted by telephone and witnesses the grievant might seek to present will be made available by telephone as well. Therefore, given the comparably significant impact on the University should the safety concerns prove warranted, and the relatively minimal impact on the grievant's presentation of her grievance to management, restricting the second step meeting to telephonic means appears reasonable in this case.

In light of the previous results of the fitness for duty exam, which apparently disallowed the grievant from returning to work for the University due to the issues described above, the University has provided sufficient indication of a potential safety concern. While the grievant has obtained an opinion that she is fit to return to duty, the University's underlying concerns have not been satisfied such that the grievant would be permitted back in the workplace, even if she were due to return at this time. Therefore, while the medical evidence the grievant presents is sufficient for this Department to acknowledge she may be capable of pursuing her grievance, the University's requested restriction is approved given the limited impact here.

Based on the foregoing, the suspension of the grievant's January 14, 2010 grievance is lifted. The University is directed to re-open the grievance and contact the grievant **within five workdays of receipt of this ruling** to schedule the second step meeting. The University's request to conduct the second step meeting by telephone is approved, as long as the grievant is provided every opportunity for discussion and fact-finding she would otherwise have for that meeting if it was conducted in person. This Department's rulings on matters of compliance are final and nonappealable.⁵

Claudia T. Farr
Director

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