

Issue: Compliance – Grievance Procedure (Other Issue); Ruling Date: March 31, 2011; Ruling No. 2011-2932; Agency: Virginia Employment Commission; Outcome: Grievant In Compliance.



*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*

**COMPLIANCE RULING OF THE DIRECTOR**

In the matter of the Virginia Employment Commission  
Ruling No. 2011-2932  
March 31, 2011

The grievant has requested a ruling on whether his March 2, 2011 grievance initiated with the Virginia Employment Commission (the agency) is in compliance with the grievance procedure. For the reasons set forth below, this Department determines that the grievance complies with the initiation requirements of the grievance procedure.

FACTS

In February 2011, the grievant was transferred to Field Office P three days per week as a result of his former work location, Field Office C, being closed. Apparently based on medical documentation, the grievant has requested as a reasonable accommodation that his commute to work not exceed 30 minutes. The grievant's travel time to Field Office P apparently exceeds this amount. As such, the grievant submitted his March 2, 2011 grievance seeking a reduced commute. In a prior grievance, the grievant raised a similar request for a reasonable accommodation based on his commuting distance as a result of a previous transfer after an office closing. Because of this prior grievance, the agency appears to assert that the March 2, 2011 challenges the same management action as this prior grievance and is noncompliant with the grievance procedure. The agency has permitted the grievance to proceed through the management steps, with the restriction that the grievance will not be qualified for a hearing at least in part due to the noncompliance. The grievant has requested this ruling to challenge the agency's noncompliance determination.

DISCUSSION

The grievance procedure provides that a grievance must not challenge the same management action challenged by another grievance.<sup>1</sup> While a portion of the grievant's prior grievance addressed a similar question, i.e., the grievant's request for a reasonable accommodation regarding his commute, it cannot be said that these two grievances challenge the same management action. The March 2, 2011 grievance is predicated upon the grievant's recent transfer to Field Office P three days per week. In contrast, however, the issue challenged in the

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<sup>1</sup> *Grievance Procedure Manual* § 2.4.

grievant's prior grievance arose due to his transfer to Field Office W in 2008.<sup>2</sup> While both grievances essentially seek a reduced commute, they challenge the agency's allegedly improper failure to accommodate the request based upon different factual backgrounds. As a result, based on the facts of this case, the grievances challenge separate and distinct management actions.

Although a matter can be grieved and resolved between two parties, that resolved issue could be renewed again if subsequent actions by the agency effectively dissolve the resolution. This is precisely the situation in which the grievant has been placed by his more recent transfer to Field Office P. According to the hearing decision in Case No. 9181 (the prior grievance), the agency had provided the grievant a work location (Field Office C) within his requested commuting distance, rendering moot his request in that prior grievance for a reasonable accommodation on those grounds.<sup>3</sup> Now, roughly two years later, the agency has taken new actions, closing Field Office C and transferring the grievant to Field Office P three days per week, which have increased the grievant's commute. The grievant's recent transfer to Field Office P renders moot any resolution between the parties regarding the commuting distance issue in 2009. A grievant is not forever barred from raising an issue grieved in the past if future management actions revive the issue. Because of the differing factual predicates and the newly revived commuting distance issue arising from the recent transfer, the March 2, 2011 grievance does not duplicate a prior grievance and must be permitted to proceed.

### CONCLUSION

For the reasons discussed above, this Department has determined that the grievance initiated on or about March 2, 2011 is compliant with Section 2.4 of the *Grievance Procedure Manual* and must be permitted to proceed without restriction. The grievance must be provided to the appropriate second step-respondent, who must schedule the required meeting at that stage **within five workdays of receipt of the grievance paperwork**. This Department's rulings on matters of compliance are final and nonappealable.<sup>4</sup>

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Claudia T. Farr  
Director

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<sup>2</sup> Decision of Hearing Officer, Case No. 9181, Oct. 14, 2009, at 2 – 4. The grievant was eventually transferred to Field Office C. *Id.*

<sup>3</sup> *Id.* at 5. As such, that issue was not addressed in the hearing decision. *Id.*

<sup>4</sup> Va. Code §§ 2.2-1001(5), 2.2-3003(G).