

Issues: Compliance – Grievance Procedure (30-Day Rule and Other Issue); Ruling Date: April 25, 2011; Ruling No. 2011-2938; Agency: University of Virginia; Outcome: Grievant in Compliance.



COMMONWEALTH OF VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF THE DIRECTOR

In the matter of the University of Virginia
Ruling No. 2011-2938
April 25, 2011

The grievant has requested a ruling on whether her September 10, 2010 and October 4, 2010 grievances with the University of Virginia (the University) are in compliance with the grievance procedure. The University asserts that the grievances did not meet certain rules for initiating a grievance. For the reasons set forth below, this Department determines that the grievances comply with the grievance procedure and may proceed to the extent described below.

FACTS

The grievant's September 10, 2010¹ grievance primarily requests an extension of her employment on active duty (instead of being moved into long-term disability (LTD)) and seeks to have this time assessed as something other than leave without pay. The grievant also requested an unspecified reasonable accommodation under the Americans with Disabilities Act (ADA). Lastly, the September 10, 2010 grievance appears to challenge the fitness for duty exam that she underwent on or about March 31, 2010. The grievant's October 4, 2010² grievance challenges the grievant's transition into LTD. The grievant also again requests an unspecified reasonable accommodation and challenges the same fitness for duty exam as the previous grievance.

The University asserts that these grievances did not meet certain criteria for proper initiation, such as timeliness and the fact that the grievances allegedly challenge issues that do not arise at the University. The grievant has requested this ruling to challenge the University's determinations.

DISCUSSION

Arise in the agency in which the employee works

The grievance procedure requires that a grievance "[a]rise in the agency in which the employee works."³ The University asserts that some of the grievant's claims in her grievances

¹ While this grievance is dated September 7, 2010, it appears that the grievance was delivered to the University on or about September 10, 2010.

² While this grievance is dated September 27, 2010, it appears that the grievance was delivered to the University on or about October 4, 2010.

³ *Grievance Procedure Manual* § 2.4.

concern determinations by a third party administrator for her disability status. Consequently, the University argues that any challenges to those actions do not arise with the University. Here, the grievances surround the grievant's transition into LTD, which effectively separated the grievant from employment with the Commonwealth. While such matters will involve the third party administrator, we cannot say that the separation of the grievant's employment does not involve the University. Whether requesting an extension or challenging her removal from employment by moving into LTD, these issues arise with the University for purposes of the initiation requirements of the grievance procedure.

Timeliness

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date he or she knew or should have known of the event or action that is the basis of the grievance.⁴ When an employee initiates a grievance beyond the 30 calendar-day period without just cause, the grievance is not in compliance with the grievance procedure and may be administratively closed.

The agency argues that because the grievant's last day at work was February 8, 2010, she was required to have initiated a grievance within 30 days of that date because any University action or omission she might challenge could have occurred no later than her last day at work. While we can understand that the management actions the grievant might be able to challenge would be extremely limited while she was out of work on disability, she was still employed by the University. As such, there are still issues that the grievant could properly raise in a grievance, which she has done here.

First, the grievant is clearly timely to challenge her separation from employment and transition into LTD, as she did so within 30 calendar days of her separation. Additionally, this Department does not find any timeliness issue with respect to the grievant's requests for an extension and reasonable accommodation under the ADA. The requests were made in her September 10, 2010 while the grievant was still employed and are therefore timely. The only issue that appears to be untimely is the grievant's apparent challenge to the March 31, 2010 fitness for duty exam in both grievances. The grievant has not presented any reason for challenging the fitness for duty nearly six months after the exam. Consequently, these grievances are untimely to challenge the fitness for duty exam.

Duplication

The grievance procedure provides that a grievance must not challenge the same management action challenged by another grievance.⁵ In the October 4, 2010 grievance, the grievant again requests an unspecified reasonable accommodation under the ADA. To the extent this is an independent claim in the grievance, it duplicates the claim from her September 10, 2010 grievance. Therefore, this claim need not be addressed as part of the October 4, 2010 grievance.

⁴ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4.

⁵ *Grievance Procedure Manual* § 2.4.

The agency also argues that the grievant's challenge to her transition into LTD in the October 4, 2010 grievance is duplicative of a claim in the September 10, 2010 grievance in which the grievant requests an extension of active duty to prevent the transition to LTD. Although these claims closely track one another, we cannot say they are truly duplicative. The September 10, 2010 grievance requests an extension from the University prior to her transition to LTD. However, the October 4, 2010 grievance challenges the actual transition into LTD and her resulting separation. The differences here, though somewhat negligible, are significant enough that these claims are not duplicative.

CONCLUSION

For the reasons discussed above, this Department has determined that the September 10, 2010 and October 4, 2010 grievances are compliant with Section 2.4 of the *Grievance Procedure Manual* and must be permitted to proceed consistent with the limitations of this Ruling. The grievant must re-submit the grievance materials to the appropriate first step-respondent, who must respond to the grievances within five workdays of receipt thereof. This Department's rulings on matters of compliance are final and nonappealable.⁶

Claudia T. Farr
Director

⁶ Va. Code §§ 2.2-1001(5), 2.2-3003(G).