

Issue: Compliance – Grievance Procedure (Other Issue); Ruling Date: June 6, 2011;  
Ruling No. 2011-2970; Agency: Department of Corrections; Outcome: Grievant In  
Compliance.



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of Department of Corrections  
Ruling Number 2011-2970  
June 6, 2011

The grievant has requested a compliance ruling regarding her February 1, 2011 grievance with the Department of Corrections (the agency). The agency asserts that, based upon the grievant's notation on the Grievance Form A, the grievant intended to conclude the grievance. For the reasons discussed below, the grievance will be permitted to proceed.

FACTS

The grievant received the second step-respondent's response in this grievance on March 17, 2011, after which she returned the Grievance Form A to the agency, checking the box that indicated she was concluding her grievance and forwarding it to the human resources office. Consequently, the agency processed the grievance as closed. About a week later, the grievant contacted the human resources office to inquire about the status of her grievance proceeding to the agency head. The grievant was informed that she had marked her grievance concluded when she returned it to the agency. The grievant said she did not believe she had closed it and that she must have checked the wrong box in error. The grievant was permitted to come to the agency's office to fix the form, which she did on March 30, 2011, but was told that whether the grievance could proceed would be up to management. The agency ultimately denied the grievant her request to proceed with and/or re-open her grievance. The grievant has appealed the agency's determination.

DISCUSSION

This Department recognizes that the Grievance Form A is an official grievance document used by the parties to communicate throughout the grievance process and as such, is of paramount importance during the grievance procedure. Because the grievant, agencies, and this Department rely on the Form A to ascertain the intent of the parties, it is incumbent on the parties to clearly and accurately express their intentions on the Grievance Form A. In EDR Ruling No. 2004-611 and EDR Ruling No. 2004-696, this Department essentially ruled that a party's notations on the Grievance Form A, be it the grievant's or the agency's, even if mistaken, could not be altered. However, since that time, this Department has considered a party's claim of inadvertent error made on the Grievance Form A in different contexts and in so doing has

generally recognized that evidence of a party's original intent is relevant.<sup>1</sup> This case presents another such situation.

Without question, the grievant checked the box that stated "I conclude my grievance and am returning it to the Human Resources Office" before sending the Grievance Form A back to the agency. Quite reasonably, the agency then closed the grievance based on the grievant's apparent intention. However, it appears that the grievant had originally intended to proceed with her grievance and in checking the box, made a mistake. When following up with the agency a week later, she became aware of her error and promptly took steps to change the Grievance Form A by checking the right box. The grievant's follow-up call to the agency is consistent with her apparent expectation that she had simply sought to proceed to the next level with her grievance and not close it.

In assessing the totality of the circumstances, this Department concludes that when the grievant checked the box to conclude her grievance she did not do so with the intent to actually conclude her grievance. Rather, it appears the grievant simply made a mistake at least in part based on her lack of familiarity with and/or confusion about the Grievance Form A. The facts presented are not a case in which the grievant originally intended to conclude her grievance and simply changed her mind after the fact. Because the evidence supports the inference that the grievant never intended to conclude her grievance, we will not allow her grievance to be closed based on the mistakenly checked box. Such an approach and result is consistent with this Department's preference for having grievances resolved on the merits rather than procedural technicalities.

Based on the foregoing, the grievance will be permitted to proceed on the basis of the grievant's subsequently changed notations. If either party is unclear of how to proceed with the grievance process, they should contact EDR's toll-free AdviceLine at 1-888-232-3842 for assistance.

### CONCLUSION

By copy of this ruling, the parties are advised that within five workdays of the receipt of this ruling, the grievance is to be re-opened by the agency and provided to the agency head for response at the qualification for hearing stage. This Department's rulings on matters of compliance are final and nonappealable.<sup>2</sup>

---

Claudia T. Farr  
Director

---

<sup>1</sup> See EDR Ruling No. 2008-1839; EDR Ruling No. 2007-1631; EDR Ruling No. 2007-1519; EDR Ruling No. 2004-751. *But see* EDR Ruling No. 2008-1735 (holding agency to original decision to qualify a grievance for hearing and disallowing reversal based on agency's subsequent analysis).

<sup>2</sup> Va. Code §§ 2.2-1001(5), 2.2-3003(G).