

Issue: Compliance – Grievance Procedure (Other Issue); Ruling Date: September 14, 2012; Ruling No. 2013-3419; Agency: Department of Game and Inland Fisheries; Outcome: Agency Not in Compliance.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Employment Dispute Resolution

COMPLIANCE RULING

In the matter of the Department of Game and Inland Fisheries
Ruling Number 2013-3419
September 14, 2012

The grievant has requested a compliance ruling regarding her August 2, 2012, grievance initiated with the Department of Game and Inland Fisheries (“DGIF” or the agency). The agency closed the grievance for non-compliance with the procedure regarding initiation of grievances. For the reasons set forth below, this grievance must be reopened and allowed to proceed.

FACTS

The grievant worked for the agency as a Law Enforcement Communications Officer until July 24, 2012. On or about June 25, 2012, the grievant gave the agency advance notice of her intention to resign from her position. The grievant had been offered and accepted a position with another state agency.

On July 24, 2012, the grievant’s last day of work with the agency, an incident occurred at the site where the grievant was scheduled to provide training to the agency’s new law enforcement personnel. After the grievant refused to engage in behavior that she perceived as being in violation of agency policy, her superior officer allegedly engaged in behavior that was discriminatory and threatening in nature toward the grievant, causing her emotional distress. On August 2, 2012, the grievant initiated a grievance alleging discrimination and hostile work environment that had been ongoing since December 2011, and culminated in the altercation of July 24, 2012.

As the grievant was no longer an employee of the agency at the time of the filing of her grievance, the agency administratively closed the grievance, asserting that the grievance was out of compliance with Section 2.4 of the *Grievance Procedure Manual*, which states that a grievance must “[arise] in the agency in which the employee works.” In response to the agency’s closure of her grievance, the grievant seeks a compliance ruling from EDR. She essentially argues that, as she was employed with the agency on the date of the incident she seeks to grieve, she is in compliance with Section 2.4 of the *Grievance Procedure Manual* and thus, her grievance should be allowed to move forward.

DISCUSSION

The grievance procedure provides that an employee's grievance must arise in the agency in which the employee works.¹ EDR has long held that this provision requires that an employee must initiate her grievance with her employing agency,² with one exception: EDR has granted grievants an opportunity to initiate their grievances with agencies other than the current employer when the actions grieved arose in an agency in which the grievant had previously been employed and the relief could only be granted by the previous employing agency.³

The issues being grieved in this case, alleged discrimination and hostile work environment, involve personnel within DGIF and arose entirely within that agency. Only DGIF has the ability to take action regarding the issues raised in the grievance. Although a hearing officer likely has no authority to order the relief sought,⁴ there is nothing in Section 2.4 of the *Grievance Procedure Manual* that prevents the grievant from initiating this grievance and proceeding through the management resolution steps. In sum, the facts of this case constitute an exception to the general rule that an employee must initiate her grievance with her employing agency, and this grievance may proceed.

CONCLUSION

Accordingly, EDR concludes that the agency has failed to comply with the grievance process and hereby reopens this grievance. The agency is ordered to issue a first step response to the grievant **within five workdays of receipt of this ruling.**

EDR's rulings on matters of compliance are final and nonappealable.⁵



Christopher M. Grab
Senior Consultant
Office of Employment Dispute Resolution

¹ *Grievance Procedure Manual* § 2.4.

² *See, e.g.*, EDR Ruling No. 2002-020; EDR Ruling No. 2003-530; *c.f.* EDR Ruling No. 2005-1021.

³ *See, e.g.*, EDR Ruling No. 2006-1113; EDR Ruling No. 2006-1100.

⁴ *See Grievance Procedure Manual* § 5.9(b), which lists examples of relief that are not available from the hearing officer including “[t]aking any adverse action against an employee (other than upholding or reducing the disciplinary action challenged by the grievance).” It should be noted that one of the primary purposes of the grievance procedure is to provide a means through which employees can raise concerns with management. As a result of the grievance process, DGIF's Human Resources Office has been put on notice of the supervising employee's alleged improper behavior. DGIF now has the opportunity, indeed the responsibility, to take any appropriate action.

⁵ Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).