

Issue: Compliance – Grievance Procedure (Other Issue); Ruling Date: September 17, 2012; Ruling No. 2013-3430; Agency: Department of Corrections; Outcome: Grievant 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 Corrections  
Ruling Number 2013-3430  
September 17, 2012

The grievant has requested a ruling on whether her July 24, 2012 grievance initiated with the Department of Corrections (the agency) is in compliance with the grievance procedure.

FACTS

On June 25, 2012, the grievant was issued a Group II Written Notice with suspension. On July 9, 2012, the grievant was issued a Group III Written Notice with termination. The grievant submitted two grievances to challenge these actions: one dismissal grievance received directly by the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management, and a second grievance sent directly to the agency. Correspondence included with the dismissal grievance indicated that the grievant intended to challenge the Group III Written Notice with termination in the dismissal grievance and the Group II Written Notice in the separate grievance because the two actions were taken on different days. Both grievances include virtually the same description of issues being grieved, i.e., both the Group III and Group II Written Notices. Consequently, the agency elected to close the July 24, 2012 grievance it received directly because it purported to challenge the same management actions as the dismissal grievance. The grievant now appeals the agency's closure of the July 24, 2012 grievance.

DISCUSSION

The grievance procedure provides that a grievance must not challenge the same management action challenged by another grievance.<sup>1</sup> While the accompanying correspondence sent to EDR clarified the grievant's intentions as to challenging the two Written Notices in separate grievances, the language of both grievances is identical. Although we understand the grievant's intentions here, we also understand the agency's determination and concur. The two grievances do purport to challenge the same management actions. As such, the July 24, 2012 grievance will remain closed.

Employees in a position such as that faced by the grievant (two separate disciplinary actions, one of which involves termination) could proceed as the grievant sought to proceed here,

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

by filing two separate grievances: one dismissal grievance with EDR and one regular grievance directly with the agency. In the alternative, an employee could include both disciplinary actions in a dismissal grievance and, presuming no objection from the agency, proceed immediately to hearing in the single dismissal grievance. This matter will be handled as if the latter choice was made in this case.<sup>2</sup> Indeed, given the duplicative language, the original presentation of the dismissal grievance supports such an approach.

To the extent there is any disagreement later in this matter, the grievant's dismissal grievance will be presumed to challenge both the Group II and Group III Written Notices, the grievant's suspension, the grievant's termination, and any other issues intended to be challenged and included in the regular grievance submitted to the agency and/or the dismissal grievance submitted to EDR. In short, the hearing for the dismissal grievance will address all issues the grievant sought to challenge in both grievances.

### CONCLUSION

For the reasons discussed above, EDR determines that the grievance initiated on or about July 24, 2012 directly with the agency will remain closed. A hearing officer will be appointed in the dismissal grievance in a forthcoming letter. EDR's rulings on matters of compliance are final and nonappealable.<sup>3</sup>



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<sup>2</sup> The grievant has consented to proceeding to hearing on all matters at this time.

<sup>3</sup> Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).