

Issue: Compliance – Grievance Procedure (Other Issue); Ruling Date:
November 28, 2012; Ruling No. 2013-3478; Agency: University of Virginia
Medical Center; 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 University of Virginia Medical Center
Ruling Number 2013-3478
November 28, 2012

The University of Virginia Medical Center (the agency) has requested a ruling on whether Notices of Appointment Cessation grievances are considered “dismissal grievances” under the grievance procedure. The agency asserts that such grievances do not qualify for the dismissal process, but must begin with the management resolution steps. For the reasons set forth below, the Office of Employment Dispute Resolution (EDR) agrees with the position of the agency that the termination at issue here does not constitute a “dismissal” as defined by the Grievance Procedure Manual.

FACTS

The grievant was employed as a Medical Center Manager with the agency. On or about October 4, 2012, the grievant was sent written notice of the agency’s termination of her appointment to this position. The grievant initiated a Dismissal Grievance directly with EDR to challenge this separation from employment. The agency asserts that the grievant’s termination was not a “dismissal” under the Grievance Procedure; therefore, the process for Dismissal Grievances provided by the newly updated Grievance Procedure Manual does not apply in this instance.¹ The agency seeks a ruling from EDR that Notices of Appointment Cessation, as is at issue in this case, do not qualify for the Dismissal Grievance process and must therefore proceed through the management resolution steps.

DISCUSSION

This case presents an issue of first impression for EDR. The Code of Virginia, as amended in 2012, provides that “grievances involving dismissals due to formal discipline or unsatisfactory job performance shall proceed directly to a formal hearing, omitting the grievance resolution steps.”² Here, the agency asserts that the grievant was not terminated

¹ See *Grievance Procedure Manual* § 2.5.

² Va. Code § 2.2-3003(A); *Grievance Procedure Manual* § 2.5.

due to formal discipline or unsatisfactory job performance. The Grievance Form A completed by the grievant cites to no issues regarding discipline or unsatisfactory job performance.³ Further, the agency indicates that when an employee is terminated as a result of formal discipline or unsatisfactory job performance, the employee would not receive an Appointment Cessation, but rather a Removal for Just Cause under agency policy.⁴ Thus, we cannot conclude that the grievant's termination should be considered a "dismissal" under the Grievance Procedure Manual.

CONCLUSION

For the reasons set forth above, EDR concludes that the Notice of Appointment Cessation, such as the one provided to the grievant in this case, shall not be considered a "dismissal" as defined by the Grievance Procedure Manual. This ruling in no way affects the grievant's ability to proceed through the regular grievance process, as EDR has long held that a grievance timely initiated but initiated with the wrong respondent will nevertheless be deemed timely.⁵ Further, the agency indicates that it does not wish to deprive the grievant of the opportunity to grieve the Notice of Appointment Cessation and will offer to the grievant the ability to utilize the Expedited Process should she choose to do so. Accordingly, EDR directs the grievant to contact the agency within **ten work days of the date of this ruling** to advise whether she wishes to utilize the Expedited Process with respect to this grievance.

EDR's rulings on matters of compliance are final and nonappealable.⁶



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³ In fact, the grievant notes that she was "repeatedly given positive feedback about [her] performance."

⁴ See University of Virginia Medical Center Human Resource Policy 105.

⁵ EDR Ruling No. 2011-2692; EDR Ruling No. 2007-1686; EDR Ruling No. 2006-1114; EDR Ruling No. 2004-645; EDR Ruling No. 2001-230.

⁶ See Va. Code §§ 2.2-1202.1(5); 2.2-3003(G).