

Issue: Compliance – Grievance Procedure (other issue); Ruling Date: October 13, 2015; Ruling No. 2016-4233; Agency: Virginia Department of Transportation; 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 Virginia Department of Transportation  
Ruling Number 2016-4233  
October 13, 2015

The Virginia Department of Transportation (the agency) seeks a compliance ruling concerning the grievant's September 1, 2015 grievance.

FACTS

On or about September 1, 2015, the grievant initiated a grievance directly with the Office of Employment Dispute Resolution (EDR), utilizing the Dismissal Grievance Form A to challenge her separation from employment.<sup>1</sup> In its response, the agency asserts that the grievant's separation from employment does not constitute a "dismissal" under the provisions of the *Grievance Procedure Manual* and accordingly, the grievant is out of compliance with the grievance procedure.<sup>2</sup>

DISCUSSION

If a Grievance Form A does not comply with the requirements for initiating a grievance, the agency may notify the employee, using the Grievance Form A, that the grievance will be administratively closed.<sup>3</sup> Because dismissal grievances are initiated directly with EDR, an agency is essentially unable to follow this process as outlined. Accordingly, the agency requests a ruling from this Office regarding the issue of alleged noncompliance.

The *Grievance Procedure Manual* defines "dismissals" as terminations due to formal discipline or unsatisfactory job performance.<sup>4</sup> In this instance, the grievant's separation from employment resulted from her automatic transition into a long-term disability status after exhausting her short-term disability benefits. We agree with the agency that the grievant's separation from employment does not constitute a "dismissal" as defined by the *Grievance Procedure Manual*, and accordingly, this grievance is not eligible for the dismissal grievance process. The grievant may, however, challenge her separation through the ordinary or expedited grievance process as she would any other management action or omission.

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<sup>1</sup> Although the grievance is dated September 1, 2015, it appears it was not faxed to EDR until September 2, 2015.

<sup>2</sup> To the extent that the question of whether the September 1, 2015 grievance would qualify for a hearing has been posed to EDR, based on the information presented, we are unable to determine the issue of qualification at this time.

<sup>3</sup> *Grievance Procedure Manual* §6.2.

<sup>4</sup> Va. Code § 2.2-3003(A); *Grievance Procedure Manual* § 2.5.

Consistent with this analysis, this ruling will also address the timeliness of the grievance to challenge the grievant's separation from employment. EDR has consistently held that a grievance initiated in a timely manner but with the wrong management representative will not bar a grievance for noncompliance.<sup>5</sup> Rather, the remedy in such a situation is either for management to provide the grievance paperwork to the appropriate step-respondent or return the grievance to the grievant for submission to that step-respondent. In either case, for purposes of timeliness, the initiation date of the grievance will be considered the date it was submitted initially. EDR views using the wrong grievance form or attempting to use the dismissal grievance process where there is not a right to do so as noncompliance of a similar nature that should be remedied in the same manner. Thus, the grievant is directed to resubmit her grievance on a Grievance Form A – Expedited Process to the agency **within five workdays of receipt of this ruling**. Once received, the agency must proceed with the applicable management steps of the grievance procedure. There is not a basis to close this grievance for noncompliance as it was simply directed to the wrong location, but was filed timely.

EDR's rulings on matters of compliance are final and nonappealable.<sup>6</sup>



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Director  
Office of Employment Dispute Resolution

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<sup>5</sup> *E.g.*, EDR Ruling No. 2011-2692; EDR Ruling No. 2007-1686; EDR Ruling No. 2006-1114; EDR Ruling No. 2001-195; EDR Ruling No. 99-007.

<sup>6</sup> *See* Va. Code §§ 2.2-1202.1(5); 2.2-3003(G).