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COMPLIANCE RULING

In the matter of Old Dominion University
Ruling Number 2022-5392
April 11, 2022

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether his grievance dated February 18, 2022 with Old Dominion University (the “university” or the “agency”) complies with the grievance procedure.

FACTS

The grievant works for the university’s police department. On June 7, 2021, the university issued to the grievant a Group I Written Notice for alleged unsatisfactory performance and failure to follow policy, arising out of an incident where he did not wear his body-worn camera. The grievant filed a grievance challenging the Written Notice on or about July 1. He subsequently concluded the grievance on July 14, after receiving the first step response.

The grievant filed a second grievance with the university on or about February 18, 2022,¹ also challenging the June 7, 2021 Written Notice. In the February 18 grievance, the grievant alleges that he discovered “relevant, new information” to support his claim that the Written Notice should be rescinded. More specifically, the grievant points to the results of a departmental survey, released on February 1, 2022, indicating that the batteries in officers’ body-worn cameras do not properly hold a charge. In the July 2021 grievance, the grievant argued that the Written Notice was unwarranted because, among other things, his body-worn camera did not hold a charge.

Upon receiving the February 18, 2022 grievance, the university notified the grievant that it would be administratively closed because it was duplicative of the July 2021 grievance and, thus,

¹ The Grievance Form A is dated February 18, 2022, but the grievant appears to state in an attachment that he initiated the grievance on March 3 and the university appears to have received the grievance on March 4. Ultimately, the precise date of initiation is immaterial because the grievance is duplicative as discussed below.

did not comply with the initiation requirements of the grievance procedure.² The grievant now appeals that determination to EDR and seeks to re-open the February 2022 grievance.

DISCUSSION

In this case, it is undisputed that the grievant's February 18, 2022 grievance challenges the same management action he previously disputed in the July 1, 2021 grievance: his receipt of a Group I Written Notice on June 7, 2021. Section 2.4 of the *Grievance Procedure Manual* states that a grievance may not "challeng[e] the same management action or omission challenged by another grievance." Nevertheless, the grievant argues that he filed the February 2022 grievance because the results of the departmental survey confirmed an issue he raised in the July 2021 grievance; namely, that officers' body-worn cameras do not hold a charge. He believes this "new information" revealed under circumstances where "the timeline was out of [his] control" justifies allowing the February 18, 2022 grievance to proceed. The grievant therefore seeks to "revive [his] grievance in an effort to have [the Written Notice] removed from [his] file."

Having carefully reviewed the two grievances and the information provided by the parties, EDR is unpersuaded that the results of the departmental survey, which the grievant cites in support of his challenge to the Group I Written Notice, serve a basis to initiate a duplicative grievance. When the grievant filed the July 2021 grievance, he had the opportunity to proceed through the management steps and, if he wished, to an administrative hearing. At such a hearing, he could have presented witness testimony or other evidence regarding obstacles presented by the duration of the department's body-worn cameras' battery charge. He chose instead to conclude that grievance after a single management step. The grievance procedure does not provide a mechanism for the grievant to revive his challenge to the Written Notice in a second grievance based upon discovery of new information related to the arguments he presented in his original grievance. Accordingly, we find that the February 2022 grievance is duplicative and may be administratively closed.³

CONCLUSION

For the reasons set forth above, the grievant's February 18, 2022 grievance will remain closed. The parties are advised that the grievance should be marked as concluded due to initiation noncompliance and no further action is required. EDR's rulings on matters of compliance are final and nonappealable.⁴

Christopher M. Grab
Director
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² The university also noted that the grievance was untimely because it was filed more than 30 calendar days after the grievant received the Written Notice. Because we find that the grievance is duplicative as discussed below, we need not address the question of timeliness.

³ To the extent the grievant's request can be construed as seeking to reopen the July 2021 grievance, there is no basis to do so under the facts presented here. EDR would consider a request from a grievant to reopen a grievance that they previously concluded voluntarily based upon, for example, evidence of a misrepresentation of a material fact or other significant change in circumstances, *e.g.* if a grievant concluded a grievance challenging a disciplinary action based on an agency's agreement to reduce or remove the discipline, but later discovered that the agency had not done so. There is no evidence of such a misrepresentation or other significant change here.

⁴ Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).