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COMPLIANCE RULING

In the matter of the Virginia Department of Corrections
Ruling Number 2022-5393
April 28, 2022

The grievant seeks a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether her March 15, 2022 grievance with the Virginia Department of Corrections (the “agency”) is in compliance with the grievance procedure. For the reasons set forth below, EDR finds that the grievance shall be permitted to proceed.

FACTS

On or about March 15, 2022, the grievant filed a grievance with the agency challenging a Group I Written Notice she received on or about February 18, 2022, during her employment at the agency. While the grievant was previously employed at the agency, her employment there ended voluntarily on March 9, 2022. She began employment at a new state agency on March 10, 2022. Upon receiving the grievance, the agency has closed it for alleged initiation noncompliance. The grievant now appeals that determination.

DISCUSSION

This situation is an uncommon circumstance, and EDR is unable to find a prior ruling in which this issue was addressed. Although not specifically challenged by the agency, it is important to note at the outset that the grievant meets the criteria for access to the grievance procedure.¹ First, she is not in a position (either her prior position or current position) exempted by the Code of Virginia from the grievance process. Second, she is and was a non-probationary employee of the Commonwealth (in her prior position and current position). Lastly, she did not voluntarily conclude her employment with the Commonwealth prior to initiating the grievance; rather, she began work with another state agency without a break in service.

The only provision of the grievance procedure that appears to be relevant to this uncommon situation requires that a grievance must arise “in the agency in which the employee works.”² While the grievant no longer “works” at the agency, she did work at the agency when the issue she is

¹ See *Grievance Procedure Manual* § 2.3.

² *Grievance Procedure Manual* § 2.4.

grieving arose and seeks to challenge that action with the agency. EDR finds that this grievance complies with this provision. This result is not dissimilar from a grievant who challenges a separation from employment with their former agency. A separated employee obviously no longer “works” in that agency, but is still permitted to pursue such a grievance as long as other requirements of access and initiation compliance are met.

EDR additionally notes that it is necessary to reach this result because the Written Notice received by the grievant at the agency would appear to be active in her employment file. The *Standards of Conduct* policy provides that “[n]otices expire when an employee voluntarily or involuntarily separates provided that re-employment with the same or different agency occurs after a formal break in service and a new probationary period is required.”³ As the grievant appears not to have had a formal break in service and is a non-probationary employee of the Commonwealth, the Written Notice has not expired. Where, as here, nothing in the Code of Virginia would appear to deny the grievant access to the grievance procedure,⁴ EDR cannot interpret the grievance procedure to prevent the grievant from being able to pursue a grievance about an active disciplinary action in her employment record. As the grievant received the Written Notice at the agency, it makes sense for her responsive grievance to be filed and proceed with the agency that decided to issue it, rather than with her new employer who had nothing to do with the disciplinary action.⁵

For the reasons discussed above, EDR concludes that the grievance initiated on or about March 15, 2022 is compliant with sections 2.3 and 2.4 of the *Grievance Procedure Manual* and must be permitted to proceed. The grievance must be provided to an appropriate first step-respondent, who must respond to the grievance **within five workdays of receipt of this ruling**. If the parties wish to handle this grievance through alternative steps rather than the default management steps to either seek resolution or expedite the matter, the parties can do so by mutual written agreement.⁶

EDR’s rulings on matters of compliance are final and nonappealable.⁷

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Director
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³ DHRM Policy 1.60, *Standards of Conduct*, at 9.

⁴ See, e.g., Va. Code § 2.2-3001(A).

⁵ Similarly, the agency would have the authority to revoke or modify the Written Notice.

⁶ See *Grievance Procedure Manual* § 8.4.

⁷ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).