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COMPLIANCE RULING

In the matter of the Virginia Department of Corrections
Ruling Number 2022-5408
May 16, 2022

The Virginia Department of Corrections (the “agency”) has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management in relation to the grievant’s alleged failure to comply with the time limits set forth in the grievance procedure for advancing or concluding a grievance.

FACTS

On or about February 3, 2022, the grievant initiated a grievance with the agency. The grievance advanced to the third step on February 25, though it appears no third step response was issued. According to the agency, the grievant subsequently resigned from her position as of April 8. The agency emailed the grievant on May 10 to “find out [her] intentions concerning the grievance” The grievant responded to confirm that she had resigned and was “no[] longer pursuing the grievance.” The agency now seeks a compliance ruling allowing it to administratively close the grievance.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.¹ That process assures that the parties first communicate with each other about the noncompliance, and resolve any compliance problems voluntarily, without EDR’s involvement. Specifically, the party claiming noncompliance must notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance.² If the opposing party fails to correct the noncompliance within this five-day period, the party claiming noncompliance may seek a compliance ruling from EDR, who may in turn order the party to correct the noncompliance or, in cases of substantial noncompliance, render a decision against the noncomplying party on any qualifiable issue. When an EDR ruling finds that either party to a grievance is in noncompliance, the ruling will (i) order the noncomplying party to correct its noncompliance within a specified time period, and (ii) provide that if the noncompliance is not

¹ *Grievance Procedure Manual* § 6.3.

² *See id.*

timely corrected, a decision in favor of the other party will be rendered on any qualifiable issue, unless the noncomplying party can show just cause for the delay in conforming to EDR's order.³

In this case, the agency's request for a compliance ruling appears to be premature because it has not shown that it first notified the grievant in writing of the alleged procedural violation. There is no indication that the agency provided the grievant with a notice of noncompliance informing her that her grievance is not in compliance with the grievance procedure. Indeed, it appears from the evidence before EDR that the grievant informed the agency she wished to advance to third step on February 25, 2022, and that agency took no further action to respond to the grievance after that point (based on the information made available to EDR with the agency's ruling request). As a result, there seems to be no basis for EDR to conclude that the grievant has failed to comply with the grievance procedure at this time.

Nevertheless, it is clear the agency contacted the grievant on May 10, 2022 to determine whether she wished to proceed with her grievance. Although the grievant did not "[i]ndicate on the Grievance Form A [her] intention to conclude the grievance and submit the form to [her] Human Resources Office" as required by the grievance procedure,⁴ she responded to the agency stating that she has resigned and is "no[] longer pursuing the grievance." Based on the grievant's representations to the agency, EDR therefore considers this grievance concluded pursuant to the grievant's stated intentions.

EDR's rulings on matters of compliance are final and nonappealable.⁵

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³ While in cases of substantial noncompliance with procedural rules the grievance statutes grant EDR the authority to render a decision on a qualifiable issue against a noncompliant party, EDR favors having grievances decided on the merits rather than procedural violations. Thus, EDR will *typically* order noncompliance corrected before rendering a decision against a noncompliant party. However, where a party's noncompliance appears driven by bad faith or a gross disregard of the grievance procedure, EDR will exercise its authority to rule against the party without first ordering the noncompliance to be corrected.

⁴ *Grievance Procedure Manual* § 3.2.

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