



JANET L. LAWSON
DIRECTOR

COMMONWEALTH OF VIRGINIA
Department Of Human Resource Management
Office of Employment Dispute Resolution

James Monroe Building
101 N. 14th Street, 12th Floor
Richmond, Virginia 23219

Tel: (804) 225-2131
(TTY) 711

COMPLIANCE RULING

In the matter of the Virginia Department of Transportation
Ruling Number 2023-5544
April 20, 2023

The Virginia Department of Transportation (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 September 9, 2022 grievance. The agency alleges that the grievant has failed to comply with the time limits set forth in the grievance procedure for advancing or concluding his grievance.

FACTS

On or about September 9, 2022, the grievant initiated a grievance with the agency. On September 15, the grievant and the agency agreed to place the grievance on hold at a modified single step while the grievant took medical leave. However, instead of returning to work, the grievant transitioned to long-term disability leave on March 11, 2023. The agency sent the grievant a letter on March 7, informing him that he needed to either advance or conclude the grievance because it could no longer remain on hold. Having received no response, on March 23, a noncompliance letter was sent to the grievant via certified mail, which was delivered on March 27. As of the time of this ruling, the grievant has not responded to this noncompliance letter; however, the grievant has since notified EDR that he intends to continue the grievance. Because more than five workdays have elapsed since the grievant received notice of the alleged noncompliance and the grievance has not yet been advanced or concluded, the agency 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 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

¹ *Grievance Procedure Manual* § 6.3.

² *See id.*

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 EDR finds that either party to a grievance is in noncompliance, its 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 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 grievant appears to have failed to advance or conclude this grievance within five workdays of receiving the agency's notice of noncompliance. This case is unique in the sense that the grievance was on hold due to the grievant being on medical leave, which ultimately transitioned to long-term disability leave. Nothing in the Grievance Procedure Manual explicitly states proper procedures when a grievance is put on hold due to medical leave, but EDR finds that these circumstances do not change the proper procedure for noncompliance. The record shows that the agency properly followed the noncompliance procedures and the grievant has not responded within the required amount of time, nor has he provided evidence that his disability prevents him from continuing the grievance process. However, the grievant has confirmed with EDR that he intends to continue the grievance and he must adhere to the instructions provided in this ruling to do so.

As the grievant has apparently failed to advance or conclude this grievance within a timely manner of being notified of the end of the grievance hold, the grievant has failed to comply with the grievance procedure. EDR therefore orders the grievant to correct the noncompliance **within ten workdays of the date of this ruling** by notifying the agency's human resources office in writing to conclude the grievance or proceed to the next step.⁴ If the grievant does not, the agency may administratively close the grievance without any further action on its part. The grievance may be reopened only upon a timely showing by the grievant of just cause for the delay (for example, a serious illness, or other circumstances beyond the grievant's control).⁵

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

³ Although the grievance statutes grant EDR the authority to render a decision on a qualifiable issue against a noncompliant party in cases of substantial noncompliance with procedural rules, 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 The agency has yet to provide a response to the grievance. However, it is unclear what step the grievance is at. According to documentation, it appears that the agency was treating the grievance as an expedited grievance as there is reference to a modified single step process. Therefore, once the grievant notifies the agency of his intent to continue with the grievance, the step respondent must contact the grievant to arrange a meeting as may be appropriate in the circumstances.

⁵ Depending on the circumstances of the grievant's long-term disability, just cause for delay may exist when considering the grievant's medical condition and ability to continue the grievance process.

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

April 20, 2023
Ruling No. 2023-5544
Page 3

Christopher M. Grab
Director
Office of Employment Dispute Resolution