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RECONSIDERED COMPLIANCE RULING

In the matter of the Virginia Department of Social Services
Ruling Number 2023-5577
June 30, 2023

The grievant has requested reconsideration of a compliance ruling issued by the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management in relation to his May 28, 2023 grievance with the Virginia Department of Social Services (“the agency”).

DISCUSSION

EDR does not generally reconsider its compliance rulings and will not do so without sufficient cause. For example, EDR may reconsider a ruling containing a mistake of fact, law, or policy where the party seeking reconsideration has no opportunity for appeal. However, clear and convincing evidence of such a mistake is necessary for reconsideration to be appropriate.¹

In EDR’s prior compliance ruling, it was determined that the agency has not failed to comply with the grievance procedure by having the agency head serve as a single management step respondent in this grievance.² In his request for reconsideration, the grievant contends that the agency head should not be permitted to serve as the single step respondent because he is the “accused subject of the grievance.” The grievant argues that such an “accused subject” cannot serve as a “ruling authority” in a grievance. To do so would “violate the fundamental precept articulated in the Code of Virginia 2.2-3000 to provide a grievance procedure that shall afford an immediate and fair method for the resolution of employment disputes.” The grievant further argues that there is a conflict of interest in allowing the agency head to serve as the single step respondent when he is “accused of malfeasance” in the grievance. The grievant states that this conflict “prevents a fair and equitable resolution of the grievance since the agency head cannot possibly rule against himself.”

While we understand the grievant’s arguments, EDR does not find that these arguments compel a different result in this case in order for the agency to comply with the grievance procedure. When an employee reports directly to the agency head and files a grievance about issues with the agency head, there are few, if any, options other than having the grievance proceed

¹ See, e.g., EDR Ruling Nos. 2010-2502, 2010-2553 n.1.

² EDR Ruling No. 2023-5574.

through a single management step with the agency head.³ While the agency head could certainly delegate this task to another agency manager, the agency head would still be able to overrule any relief that may be granted by the agency in the grievance process.⁴

Further, EDR's long-standing approach is that a manager's involvement in a particular grieved matter does not prevent that that manager from being involved in the grievance.⁵ Although the grievant interprets the agency head's involvement as preventing an "immediate and fair method" for resolution of the grievance, the agency head is the only member of management who has authority to resolve the matters the grievant has raised. Thus, placing the matter directly with the agency head, as the agency's ultimate decision-maker, is the most direct method to seek resolution to the matters grieved. While the grievant perceives this as a "conflict of interest," we do not agree. The management resolution structure is intended to create opportunities for managers to address errors and misjudgments that may have occurred, including their own.⁶ Here, the grievance procedure is providing the grievant with the opportunity to bring his concerns directly to the agency head, discuss them, have them considered, and receive a response; a stage is set for a potential resolution. Indeed, nothing prevents the agency head from changing their mind and providing relief in the response to the grievance based upon consideration of whatever information the grievant has put forward. Even if the grievant is not optimistic about a satisfactory resolution at this level, this outlook is not a basis for EDR to conclude that the agency has failed to comply with the requirements of the grievance procedure.

More fundamentally, the grievant appears to be seeking an authority to rule against the agency head. Given that the agency head is the appointing authority in an agency,⁷ it is not surprising that the final determinations for personnel matters *within the resolution steps of a grievance* will rest with the agency head.⁸ However, the agency head is not the final "ruling authority" in the grievance altogether. If the grievant is unable to receive relief to his satisfaction during the resolution steps, the grievance procedure provides the opportunity to appeal to this office seeking qualification of the grievance for a hearing. If EDR determines that the grievance qualifies for a hearing, then the issues will be decided by an independent hearing officer who can order relief. Accordingly, EDR again finds that the agency is in compliance with the grievance procedure with respect to the single management step.

CONCLUSION

For the reasons set forth above, EDR declines to reconsider its prior compliance ruling. The grievant's ruling request is respectfully denied.

³ EDR finds no indication in the grievance record that there has been an alternative proposed or considered by either party.

⁴ Va. Code § 2.2-3003(D) ("Each level of management review [of the grievance] shall have the authority to provide the employee with a remedy, subject to the agency head's approval.").

⁵ An exception to this could arise in cases involving claims of discrimination and/or retaliation. *See Grievance Procedure Manual* § 2.4.

⁶ *See* DHRM Office of Employment Dispute Resolution, "Frequently Asked Grievance Questions," No. 8, available at www.dhrm.virginia.gov/employment-dispute-resolution/grievance.

⁷ Va. Code § 2.2-602(A).

⁸ *See* Va. Code § 2.2-3003(D).

As addressed in the prior ruling, the agency is ordered to provide the grievant with a written response to the grievance from the agency head **within five workdays of the date of this ruling.**

EDR's rulings on matters of compliance are final and nonappealable.⁹

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⁹ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).