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COMPLIANCE RULING

In the matter of the Department of Corrections
Ruling Number 2023-5509
February 22, 2023

The 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 September 20, 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 20, 2022, the grievant initiated a grievance with the agency. The first-step respondent issued a response dated November 18, 2022.¹ After apparently receiving no response from the grievant, the agency notified the grievant via two emails – December 13, 2022, and January 13, 2023 – that, in order to comply with the requirements of the grievance procedure, the grievant should respond within five workdays via the Grievance Form A whether he wished to advance or conclude his grievance. On January 25, 2023, having apparently received no further response from the grievant, the agency requested a compliance ruling from EDR allowing for the grievance to be administratively closed.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.² 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.³ If the opposing party fails to

¹ The first-step respondent indicated that the delay in his response was due to the grievant's Form A being “inadvertently misplaced” during “office moves.” After the grievant notified the agency that its response was overdue, the agency eventually obtained a new copy of the grievance form from the grievant and then provided a first-step response on the following day. In doing so, it would appear that the agency corrected any noncompliance related to the timeliness of this response.

² *Grievance Procedure Manual* § 6.3.

³ *See id.*; Va. Code § 2.2-3003(G).

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 EDR finds that either party to a grievance is not compliant, our 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.⁴

In this case, the grievant appears to have failed to advance or conclude this grievance within five workdays of receiving the agency's first-step response, as required by the grievance procedure.⁵ Although the grievant has understandably expressed frustration regarding the agency's failure to provide a timely first-step response, there is no record that the grievant requested a compliance ruling from EDR to address that issue, and in the meantime it appears that the agency ultimately corrected its non-compliance.⁶ Having apparently come back into compliance with the grievance procedure, the agency notified the grievant of his own noncompliance via two emails sent one month apart. Moreover, upon EDR's inquiry, the grievant has not indicated that he plans to advance his grievance.

As the grievant has apparently failed to advance or conclude this grievance within five workdays of receiving the first-step response, we conclude that he 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 request qualification for a hearing. If the grievant does not do so, 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).

EDR's ruling on matters of compliance are final and nonappealable.⁷

Christopher M. Grab
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⁴ 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.

⁵ See *Grievance Procedure Manual* § 3.1.

⁶ The grievant inquired to EDR about whether his requested relief should be granted due to the agency's failure to respond timely to his grievance. Because we do not identify bad faith on the agency's part, we observe that EDR would have been unlikely to render a decision against the agency for this procedural violation even if we had been called upon to issue a ruling via the process outlined in section 6.3 of the *Grievance Procedure Manual*.

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