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COMPLIANCE RULING

In the matter of the Virginia Department of Transportation
Ruling Number 2023-5516
March 6, 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 December 6, 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 her grievance.

FACTS

On or about December 6, 2022, the grievant initiated a grievance with the agency. The grievance process proceeded through all three management steps, and the agency issued a response to the grievant’s request for qualification for a hearing on January 4, 2023. On January 25, 2023, having received no response from the grievant, a noncompliance letter was sent to the grievant via secured email. In its notice of noncompliance, the agency requested a response from the grievant within five workdays of receipt of the notice. 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 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

¹ *Grievance Procedure Manual* § 6.3.

² *See id.*

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 cases where the noncompliance arises from the grievant not responding to the agency head's denial of qualification, and the grievant did not respond within the five-day period following the notice of noncompliance, the grievance is then considered closed.⁴

In this case, the grievant appears to have failed to advance or conclude this grievance within five workdays of receiving the agency's response to the request for a hearing, as required by the grievance procedure.⁵ Moreover, the agency notified the grievant of the noncompliance and the grievant has not advanced or concluded the grievance within those five additional workdays granted by the agency's noncompliance letter. Therefore, pursuant to Section 4.3 of the *Grievance Procedure Manual*, the agency may now consider the grievance closed. If the employee later seeks to appeal the agency head's denial of qualification, EDR will consider whether just cause exists to consider the employee's request for a qualification ruling.⁶

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

Christopher M. Grab
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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 *Grievance Procedure Manual* § 4.3.

⁵ *Id.*

⁶ *Id.*

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