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COMPLIANCE RULING

In the matter of the Department of Health Professions
Ruling Number 2022-5428
July 25, 2022

The Department of Health Professions (the “agency”) has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) on whether the grievant’s February 11, 2022 grievance complies with the grievance procedure.

FACTS

On or about February 11, 2022, the grievant initiated a grievance with the agency challenging her receipt of a Group I Written Notice and disability discrimination. The grievance describes the grievant’s health and how it impacted and was affected by the circumstances of the case. The grievant’s claims of disability discrimination appear to be intertwined with her challenge to the Group I Written Notice, although as described in an addendum, the grievant appears to assert claims of hostile work environment and retaliation. As relief, the grievant sought removal of the Written Notice, job reassignment, recovery of expenses for copying medical documentation, and reimbursement of annual leave associated with her time on short-term disability. Since filing the grievance, the grievant has resigned from employment with the agency. The agency has also rescinded the Group I Written Notice. The agency has now requested a compliance ruling from EDR seeking to administratively close the grievance on the basis that the remaining issues cannot be remedied at a grievance hearing. Although the grievant requests that EDR review the materials to determine whether any relief can be granted for outstanding issues, the grievant also indicates she has “no objection” to closing the grievance.

DISCUSSION

In general, “*any* management actions or omissions may be grieved” by an employee, so long as the grievance complies with the initiation requirements of the grievance procedure.¹ However, an employee’s separation from employment after initiating a grievance may render challenges to certain management actions or omissions moot. In such a situation, EDR will consider an agency’s request to administratively close a former employee’s grievance, in part, on

¹ *Grievance Procedure Manual* § 2.4.

the theory that a grievance may not be “used to . . . impede the efficient operations of government.”² For example, further relief may not be available through the grievance procedure after an employee has separated, even though the challenged management actions may appropriately be the subject of a grievance.³

In this case, the agency essentially argues that no relief is available to address the grievant’s concerns because of her resignation from employment and the rescission of the Group I Written Notice. In terms of the grievant’s remaining claims,⁴ EDR perceives no meaningful relief that a hearing officer could grant.⁵ If an issue of discrimination, retaliation, or hostile work environment is qualified for hearing and the hearing officer finds that it occurred, the hearing officer may order the agency to create an environment free from the behavior, and to take appropriate corrective actions necessary to cure the violation and/or minimize its reoccurrence.⁶ However, since initiating her grievance, the grievant no longer works for the agency. EDR therefore finds that issues raised are moot for purposes of this grievance. A hearing officer would be unable to provide any effective relief if this grievance were qualified for a hearing.⁷ Having carefully considered the parties’ arguments, EDR finds that the issues raised in the grievance have been resolved by the agency, are moot because of her resignation, or are otherwise not susceptible to relief through the grievance procedure, and thus there is no basis for the grievance to proceed.⁸ The grievant has also indicated that she does not object to closing the grievance.

Accordingly, and for the reasons discussed above, EDR finds that the grievant’s February 11, 2022 grievance should be administratively closed and will not proceed further. EDR’s rulings on matters of compliance are final and nonappealable.⁹

Christopher M. Grab
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² Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4(4); see EDR Ruling No. 2020-4973.

³ See, e.g., EDR Ruling No. 2018-4722; EDR Ruling No. 2018-4724; EDR Ruling No. 2018-4586.

⁴ Issues involving the Written Notice are resolved.

⁵ For instance, the grievant’s request for job reassignment is impossible following the grievant’s resignation from employment with the agency.

⁶ *Rules for Conducting Grievance Hearings* § VI(C)(3).

⁷ The grievant has raised the issue of reimbursement of expenses for copying medical records and restoration of annual leave related to her short-term disability claim. As the grievant identifies, hearing officers do not have authority to award damages. *Grievance Procedure Manual* § 5.9(b). Further, the grievant’s request for restoration of annual leave seems to be related to her claims that her absences were occupational/work-related. Accordingly, such relief is either a request for damages, which a hearing officer cannot award, or seeks recovery for a work-related injury, which would be a matter to be addressed in a workers’ compensation claim, which the grievant appears to have pursued as well, rather than a grievance.

⁸ EDR’s determinations in this ruling only address the grievant’s claims and relief available under the grievance procedure. This ruling does not address whether the grievant may have other remedies available through another process or claim. To the extent the grievant may have other legal or equitable remedies available, they could be sought in another forum. For example, nothing in this ruling precludes the grievant from pursuing a timely complaint with the federal Equal Employment Opportunity Commission, to the extent she has not already done so.

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