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COMPLIANCE RULING

In the matter of the Department of Behavioral Health and Developmental Services
Ruling Number 2023-5439
August 16, 2022

The Department of Behavioral Health and Developmental Services (the “agency”) has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Behavioral Health and Developmental Services in relation to the grievant’s June 15, 2022 grievance.

FACTS

The grievant submitted a dismissal grievance to EDR on June 15, 2022, challenging his receipt on June 13 of a Group III Written Notice with termination. The agency has advised EDR that the grievant passed away on August 1. The grievance at issue had advanced to hearing and was scheduled to take place on November 2, 2022. The agency has requested this ruling to close the grievance.

DISCUSSION

The grievance procedure does not address the impact of a grievant’s death on their existing grievance. However, an employee with access to the grievance procedure has an interest in continued employment absent just cause for removal.¹ Further, if that employee is terminated, grieves their termination, and is reinstated by a hearing officer, the employee may be entitled to full or partial back pay and benefits from the date of dismissal to the date of reinstatement.²

In this case, because monetary relief might be available if the grievant were to prevail in his grievance, the grievant’s estate or next of kin should be entitled to pursue any such relief (for example, back pay and benefits from the date of termination to the date of his death) as a successor in interest.³ Although EDR is unaware of any court decision that directly addresses this issue, we

¹ See *Detweiler v. Dep’t of Rehab. Servs.*, 705 F.2d 557, 560 (4th Cir. 1983).

² Va. Code §2.2-3005.1(A). An order for reinstatement may also impact entitlements to other benefits such as, for instance, life insurance proceeds.

³ In cases at law, in the event of a party’s death, a successor in interest can be substituted for the party by motion. Sup. Ct. of Va. R. 3:17. The federal Merit Systems Protection Board also allows for the substitution of a successor in interest to an employee who dies after filing a matter with the Board, when the interests of the employee do not

have considered the effect of a grievant's death on a pending grievance in prior rulings⁴ and reached the same result there as we do in the present case.

The agency is therefore directed to send a copy of this ruling to the grievant's known next of kin to provide them with notice of these issues. If the grievant's next of kin or other representative wishes to continue this grievance as a successor in interest, they must notify EDR in writing of the individual who will serve in that role, as a substitute for the grievant, **within 30 calendar days of receipt of this ruling**.⁵ Such individual must have the appropriate authority to represent and pursue the grievant's interests.⁶ Alternatively, if the grievant's representative does not wish to pursue this grievance, they must notify EDR and we will consider the grievance withdrawn.⁷ EDR will notify the agency of the decision made by grievant's representative if the representative does not inform the agency.

If either party has any questions regarding the grievance procedure, they may contact EDR's toll-free AdviceLine at 1-888-232-3842, send an email to edr@dhrm.virginia.gov, or contact EDR by mail at the above address.

EDR's rulings on matters of compliance are final and nonappealable.⁸

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terminate upon his death. 5 C.F.R. § 1201.35. Such an approach appears just and appropriate in state grievance matters as well.

⁴ *E.g.*, EDR Ruling No. 2009-2317.

⁵ If the grievant's representative needs additional time to appoint the appropriate individual with proper authority, they should request an extension from EDR. An extension will only be available for just cause.

⁶ If the university objects to the substitution on any grounds, it may pursue that issue through the noncompliance provisions of the grievance procedure. *See Grievance Procedure Manual* § 6.3.

⁷ If a representative is not substituted for the grievant within 30 calendar days of the date of this ruling and no extension is granted, the university may request a compliance ruling from EDR to administratively close the grievance. *See Grievance Procedure Manual* § 6.3.

⁸ *See* Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).