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COMPLIANCE RULING

In the matter of the Department of Corrections
Ruling Number 2024-5597
August 2, 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 February 27, 2023 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 the grievance.

FACTS

On or about February 27, 2023, the grievant initiated a grievance with the agency. The agency states that the first step response was emailed to the grievant on Wednesday, April 26, 2023. Having received no further response from the grievant, the agency then sent a notice of noncompliance to the grievant via email on or about July 14, 2023. However, this notice does not appear to have been received by the grievant as it was sent to an incorrect email address.¹ EDR reached out to the grievant via the apparently correct email address, to which the grievant immediately responded that he wishes to continue with his grievance.

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 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 It appears that the agency sent the email to the address listed on the Grievance Form A. However, there is an apparent typo on the Grievance Form A, with the grievant’s personal email address missing a letter.

² *Grievance Procedure Manual* § 6.3.

³ *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.⁴

In this case, the grievant appears to have failed to advance or conclude the grievance within five workdays of receiving the agency's first resolution step response, as required by the grievance procedure.⁵ However, because the grievant does not appear to have received the notice of noncompliance, it is premature to request the closure of the grievance. Moreover, the grievant has indicated to EDR that he wishes to continue with the grievance.

For the grievant to continue with his grievance, the grievant must notify his human resources office in writing that he wishes to advance his grievance to the second step **within five workdays of the date of this ruling**. If the grievant does not do so, the agency should provide a new notice of noncompliance to the grievant and, if no response is received, later seek a further compliance ruling consistent with the provisions of Section 6.3 of the *Grievance Procedure Manual*.

EDR's rulings on matters of compliance are final and nonappealable.⁶

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