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COMPLIANCE RULING

In the matter of the Virginia Department of Social Services
Ruling Number 2024-5609
August 30, 2023

Both the grievant and the Virginia Department of Social Services (“the agency”) have 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 March 28, 2023 grievance. As described below, EDR finds neither party to be in noncompliance.

FACTS

On or about March 28, 2023, the grievant initiated a grievance with the agency regarding alleged disability discrimination and breach of confidentiality. The grievance proceeded to the second-step respondent, who provided a response to the grievance on or about June 12, 2023. Having apparently received no further response from the grievant after the issuance of the second step response, the agency’s human resources representative notified the grievant of noncompliance in an August 2, 2023 email. The email sought a response from the grievant by August 9, 2023. On that date, the grievant provided a response seeking to continue with the grievance. However, the grievant’s correspondence was sent to high level managers at the agency instead of the human resources representative, and it does not appear human resources became aware of the correspondence. As such, human resources sought this compliance ruling to address the grievant’s alleged noncompliance in not advancing or concluding the grievance. The grievant has since reiterated that she sought to advance her grievance in the August 9, 2023 correspondence. Further, that correspondence sought a compliance ruling from EDR due to the agency’s alleged noncompliance with the grievance procedure. EDR will address each matter of alleged noncompliance in this ruling.

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

¹ *Grievance Procedure Manual* § 6.3.

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 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

Agency's Compliance Ruling Request

In this case, the grievant had failed to advance or conclude the grievance within five workdays of receiving the agency's second resolution step response, as required by the grievance procedure.⁴ However, upon notifying the grievant of her noncompliance, the grievant provided a response seeking to advance her grievance to the next step. Accordingly, the grievant has corrected her noncompliance and the grievance must proceed to the third step.

Grievant's Compliance Ruling Request

The grievant contends that the agency has failed to comply with the grievance procedure in providing the appropriate second-step respondent and meeting. For example, it appears that the grievant attempted to advance her grievance to "co-second-step-respondents." The individuals to whom the grievant attempted to advance her grievance as such "co-second-step-respondents" were the normal second-step respondent and the third-step respondent. Nothing in the grievance procedure provides for co-step-respondents in the manner sought by the grievant. While grievance parties could agree to such a modification of the resolution steps, the agency does not appear to have agreed to such an approach here. To the extent the grievant believes that a different step respondent was required to address certain claims, that is not the case. Each step respondent has the authority to grant relief on all matters grieved.⁵ Consequently, it appears that the agency has appropriately had the normal second-step respondent serve in that role, provided the grievant with a meeting, and issued a written response to her grievance that addressed the issues and relief requested. The agency has complied with the grievance procedure.

The grievant also asserts that the agency's human resources office has failed to follow the recommendations made by the second-step respondent. Failure to provide relief ordered by a step respondent is not a compliance matter within EDR's authority to direct.⁶ Such matters should be directed to the agency's management, such as the second-step respondent, the third-step

² *See id.*

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 *See Grievance Procedure Manual* § 3.2.

⁵ Va. Code § 2.2-3003(D). All remedies provided by a step respondent are subject to agency head approval.

⁶ The grievance statutes do not provide EDR with authority to compel an agency's promise of relief during the resolution steps.

respondent, or agency head. If the grievance advances to a qualification ruling without ordered relief still being withheld, such matters can be taken into consideration to determine whether the grievance qualifies for a hearing.

CONCLUSION

For the reasons set forth above, EDR finds that the agency is in compliance with the grievance procedure and the grievant has come into compliance to advance her grievance to the third step. The third-step respondent must provide a written response to the grievance **within five workdays of the date of this ruling**.

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

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