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COMPLIANCE RULING

In the matter of the College of William & Mary
Ruling Number 2024-5622
October 17, 2023

The grievant has requested a compliance ruling from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management in relation to her July 20, 2023 grievance with the College of William & Mary (the “college” or “agency”). The grievant alleges that the agency administratively closed her grievance on grounds not permitted by the grievance procedure.

FACTS

On or about July 20, 2023, the grievant initiated a grievance with the college to challenge the issuance of a Group I Written Notice and surrounding issues. After meeting with the grievant, the second management-resolution-step respondent provided a written response on or about August 31, 2023. The response suggested multiple potential remedies to issues the grievant raised, but rescission of the Group I Written Notice was not among them. According to the college, the grievant should then have indicated by September 11, 2023, whether she wished to withdraw or advance her grievance. It appears that the grievant did not do so, instead seeking advice from college human resources staff on the effects of withdrawing her grievance with her formal discipline reflected in her personnel record. On September 18, 2023, human resources staff advised the grievant that the grievance was closed, due to the grievant’s failure to respond timely. The grievant now challenges the administrative closure of her 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-workday period, the party claiming noncompliance may seek a compliance ruling from EDR, who may in turn order the party to correct the noncompliance

¹ *Grievance Procedure Manual* § 6.3.

² *See id.*

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

As it relates to the time requirements of the grievance procedure, the process is intended to provide the parties with an expeditious way to resolve workplace issues.⁴ In furtherance of this goal, the five-workday rule requires the parties to a grievance to take appropriate action, depending on the procedural stage of the grievance, within five workdays of receipt of the grievance.⁵ Thus, for example, a grievant must advance or conclude their grievance within five workdays of receiving each step response, and each step-respondent is required to issue their response within five workdays of receiving the grievance.

In this case, the information provided to EDR reflects that the grievant's five-workday response period at the second step expired on September 11, 2023, such that she was not in compliance with the grievance procedure after that time. However, as described above, the procedural remedy available to the college in that circumstance was to (1) notify the grievant that she was out of compliance with the grievance procedure and, if the non-compliance was not corrected within five workdays, (2) seek a compliance ruling from EDR.⁶ Although the grievance procedure permits agencies to administratively close a grievance based on non-compliance with *initiation* requirements, this option is not available at subsequent stages of the process.⁷ Accordingly, although no timely response from the grievant is reflected in the record, it appears that the college's decision to administratively close the grievance also was not in compliance with the grievance procedure.

Because no basis for administrative closure of the grievance is evident, and the grievant was not provided an adequate opportunity to correct her non-compliance, the process should resume at the second step where the grievant was required to respond. Therefore, within **five workdays** of the date of this ruling, the grievant must indicate her intention to withdraw or advance her grievance by checking the appropriate box on the Grievance Form A and returning it to her human resources department.⁸ If she does not do so, the college may then provide a notice of noncompliance and proceed through the party noncompliance steps listed in section 6.3 of the *Grievance Procedure Manual*.

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* § 1.1.

⁵ See *id.* §§ 3.1, 3.2, 3.3. The *Grievance Procedure Manual* defines "workdays" as the "[n]ormal work schedule (excluding authorized leave time) for the individual responsible for taking the required action." *Id.* § 9.

⁶ *Id.* § 6.3.

⁷ Compare *id.* §§ 2.4, 6.2, with *id.* § 6.3.

⁸ *Id.* § 3.2.

EDR's rulings on matters of compliance are final and nonappealable.⁹

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