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COMPLIANCE RULING

In the matter of the Virginia Department of Social Services
Ruling Number 2024-5625
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 the grievant’s March 28, 2023 grievance with the Virginia Department of Social Services (“the agency”). As described below, EDR finds that the agency has corrected its noncompliance.

FACTS

On or about March 28, 2023, the grievant initiated a grievance with the agency regarding alleged disability discrimination and breach of confidentiality. On or about September 19, 2023, the grievant advanced her grievance to the agency head for a determination as to whether the grievance qualifies for a hearing. Having apparently received no further response from the agency head, the grievant notified the agency head of noncompliance in a September 28, 2023 email. As of the date of the grievant’s subsequent request to EDR for a compliance ruling, the grievant had not received the agency head’s determination. After requesting this ruling, the agency head issued his response to the grievance on October 6, 2023.

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-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

¹ *Grievance Procedure Manual* § 6.3.

² *See id.*

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

Section 4.2 of the *Grievance Procedure Manual* states that “[w]ithin five workdays of receiving the employee’s hearing request, the agency head must determine whether the grievance qualifies for a hearing.” The agency head’s response must be “on the Grievance Form A or an attachment” and “should also notify the employee of their procedural options.”⁴ The grievant is correct that the agency head failed to provide her with a qualification decision in a timely manner. The grievant then gave the agency head notice of alleged noncompliance, which was resolved shortly after she requested this ruling from EDR. Nonetheless, it is clear that the grievant has now received the agency head’s qualification decision in writing, as required by the grievance procedure. We therefore find that the grievant’s claim of noncompliance is moot because it has been corrected by the agency and we will take no further action on this issue.

CONCLUSION

For the reasons set forth above, EDR finds that the agency has corrected its noncompliance and there are no other outstanding matters to be addressed at this time. The parties should therefore proceed as required by the grievance procedure. The grievance process was temporarily halted for EDR to address the grievant’s claim of noncompliance.⁵ Because the grievant has received the agency head’s qualification decision, she should respond to the agency’s Human Resources Office within five workdays, indicating whether she wishes to conclude her grievance or appeal the qualification decision to EDR.⁶

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

Christopher M. Grab
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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 *Grievance Procedure Manual* § 4.2.

⁵ *Id.* § 6.1 (stating that a challenge of alleged noncompliance to EDR “will normally stop the grievance process temporarily”).

⁶ *Id.* § 4.3.

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