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COMPLIANCE RULING

In the matter of the Department of Social Services
Ruling Number 2024-5630
November 2, 2023

The grievant seeks a compliance ruling from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) on whether her October 5, 2023 grievance with the Department of Social Services (the “agency”) is in compliance with the grievance procedure. The agency has asserted that the grievance challenges issues that are not timely under the grievance procedure. For the reasons set forth below, EDR determines that the grievance is timely and shall be permitted to proceed.

FACTS

On or about April 6, 2023, the grievant, a division director within the agency, initiated a grievance (the “Prior Grievance”) alleging a hostile work environment and retaliation by her immediate Supervisor. According to the Prior Grievance’s written narrative, the grievant first raised complaints about the Supervisor’s behavior in 2022, and an agency investigation sustained at least some of her allegations. The Prior Grievance alleged that, since her complaints, the Supervisor had retaliated against her by shrinking the grievant’s division staff and privately encouraging others to file complaints against her. It appears that, shortly after filing the Prior Grievance, the grievant took a medical leave of absence, which she attributed to a hostile work environment and “boys’ club” within her department.

On April 19, 2023, the agency head met with the grievant as the single management-step respondent for the Prior Grievance. According to the grievant, the agency head agreed during this discussion to change her management structure such that she would no longer report to the Supervisor. In his subsequent response, the agency head wrote: “Upon your release [from medical leave] to work, I can ensure that you will be placed into a safe, respectful work environment.” On May 25, 2023, the grievant indicated her intention to conclude the Prior Grievance on grounds that her “[r]equested relief will be granted. (Move to a different area within the agency where I will not report to [the Supervisor]).”¹ On July 11, 2023, upon the grievant’s return to work, the agency head proposed a more specific plan that the grievant should maintain her role but transition her team to management by the agency’s new Chief Deputy. The grievant agreed.

¹ It appears that the grievant mistakenly used the Dismissal Grievance form to indicate that she was concluding the Prior Grievance.

According to the grievant, until this point she had been a division director with three managerial direct reports and more than 30 total employees. Her role involved broad oversight of the agency's technological project management, including policy/procedural development, compliance and accountability, funding and other resource allocation for projects and strategic initiatives, recruitment, and training/coaching. However, on July 27, 2023, one of her direct reports allegedly informed her that he had learned he now reported directly to the Chief Deputy, not to the grievant. The grievant then sought clarification with the Chief Deputy, who confirmed that the grievant should "act in advisory role to me – and not a supervisory role to the [grievant's former] teams" as a "short-term solution" while agency leadership determined "optimal structure." The Chief Deputy then provided the grievant with a new organizational chart that showed the grievant, with a new title, reporting to the Chief Deputy in the same capacity as her former direct reports, who would now manage their teams independently. According to the grievant, no positions reported to her under the new structure as presented.

In subsequent days and through the month of August 2023, the grievant allegedly sought clarity from her new supervisor on the function and responsibilities of her new role. The record does not reflect that the Chief Deputy provided additional information during this time, indicating that he would plan to share specifics of the role after approval by the agency head. Nevertheless, in late August or early September, the Chief Deputy instructed the grievant to change her signature block to reflect her new job title, which she did. Later in September, the Chief Deputy tasked the grievant to create a "charter" for her new functional area and then circulate it to her "peers" (former direct reports) for "agreement." When she did so, the grievant's former direct reports apparently advised the Chief Deputy that they perceived substantial overlap between the grievant's new role and their own respective roles. Based on this feedback, the Chief Deputy instructed the grievant on October 5 to "go back to the drawing board . . . and work in a collaborative manner with [the other teams] to help charter an organization that is more in alignment with the view of SUPPORT" The grievant objected: "I'm being asked to have [former direct reports] determine what my role and responsibilities should be. This puts me in a difficult position."

On or about the same day, October 5, 2023, the grievant filed another grievance (the "Second Grievance"). She asserted that, following her return from medical leave due to her "former abusive boss" at the agency, she had expected "a safe environment and the retention of my title and authority." However, she claimed, the Chief Deputy had "stripped [her] of [her] position, along with . . . the dedicated staff of 30 to 33 individuals who supported these departments." The grievant requested an expedited grievance process "in addressing my ongoing mistreatment by the senior leadership of the [agency]. The consistent mistreatment I have experienced from . . . senior leadership has had a profound impact on both my personal and professional life." The grievant requested "to be placed in a position that is comparable to my previous role . . . with the same level of authority, responsibility, and compensation" and, among other relief, to be approved for leave until the situation could be resolved.

On October 17, 2023, the Chief Deputy sent the grievant an email: "As requested, I am defining your responsibilities." He attached a slide presentation purportedly describing the grievant's new function: essentially, assisting with the development of a process to shepherd

internal project requests to either approval or denial (by others) and supporting a to-be-created internal agency council.

The same day (October 17), the agency informed the grievant that the Second Grievance would be administratively closed because the grievant had been “informed of [her] new position back on August 1st” and, therefore, her October 5 grievance to challenge that position was untimely.

The grievant now seeks a ruling on whether the agency’s administrative closure of her grievance complies with the grievance procedure.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date he or she knew or should have known of the event or action that is the basis of the grievance.² When an employee initiates a grievance beyond the 30-calendar-day period without just cause, the grievance is not in compliance with the grievance procedure and may be administratively closed. However, EDR has consistently held that a claim of workplace conduct that is ongoing is raised timely if some agency action alleged to be part of the ongoing conduct occurred within the 30 calendar days preceding the initiation of the grievance.³

In this case, although the record reflects that the grievant knew by August 1, 2023, that significant changes were planned for her position, the available information does not indicate that the grievant knew or should have known the nature of these changes. The record suggests the changes, as communicated to the grievant in late July, were vague and presented as short-term and subject to change based on further evaluation and approvals. Moreover, it appears that the substantive nature of the grievant’s new role was a matter of active dispute and uncertainty on the date she filed the Second Grievance, with the Chief Deputy rejecting her draft “charter” for her new functional area. According to the grievant, significant uncertainty around her basic job responsibilities persists as of the date of this ruling, as she claims that the Chief Deputy has withdrawn or revised key aspects of her function since October 17, and no Employee Work Profile has been created.

In addition, the Second Grievance is fairly read to raise the issue of prohibited conduct toward the grievant by agency management, even apart from the evolving change to her organizational role. The Second Grievance narrative states: “I have been minimized, marginalized, and subjected to mistreatment.”⁴ The grievance further asserts that such mistreatment has “caused significant distress and . . . hindered my professional growth and hindered my ability to contribute effectively to the organization.” Upon further inquiry by EDR, the grievant has described several

² Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.2.

³ See Nat’l R.R. Pass. Corp. v. Morgan, 536 U.S. 101, 115-18 (2002) (holding the same in a Title VII hostile work environment harassment case); see also *Guessous v. Fairview Prop. Invs., LLC*, 828 F.3d 208, 221-24 (4th Cir. 2016).

⁴ See generally DHRM Policy 2.35, *Civility in the Workplace*, which prohibits harassment, bullying, threatening or violent behaviors, and behaviors that undermine team cohesion, staff morale, individual self-worth, productivity, and safety.

interactions with the Chief Deputy that, if true, would support her allegations, and that have occurred within the 30 calendar days preceding the Second Grievance (and have allegedly continued since filing).

Accordingly, EDR's review of all of the information presented by the parties indicates that the Second Grievance challenges two ongoing issues implicating the terms and conditions of the grievant's employment: (1) substantial ongoing uncertainty about the basic functions of the grievant's new role (and whether the reassignment is tangibly adverse), and (2) ongoing prohibited conduct toward the grievant by one or more agency managers. This ruling does not in any way address the merits of these issues as a matter of fact or policy. However, we cannot conclude that the Second Grievance is untimely to address either ongoing issue the grievant has alleged regarding how her work environment has changed following the conclusion of her Prior Grievance. EDR further notes that the grievant appears to have concluded the Prior Grievance (or intended to conclude it) based on the agency's representations regarding her work environment and reporting structure going forward. To the extent that an agency departs from representations that elicited the grievant's decision to conclude a grievance, EDR may entertain the grievant's request to re-open the concluded grievance process for just cause. In this case, however, it appears that the grievant chose instead to address new developments as ongoing matters to be raised in a Second Grievance. The grievant has provided sufficient information to support this approach as consistent with the initiation requirements of the grievance procedure.

For the reasons discussed above, EDR finds no basis to conclude that the Second Grievance fails to comply with sections 2.2 and 2.4 of the *Grievance Procedure Manual*. Accordingly, the grievance must be permitted to proceed in full.

As additional procedural guidance, it appears that the grievant's current reporting chain includes only the Chief Deputy (immediate supervisor) and the agency head. Because the Second Grievance fairly alleges prohibited conduct against her by her immediate supervisor, the grievant appears to have initiated the grievance with her next-level supervisor – the agency head. Effectively, then, the agency head may serve by default as the single management-step respondent, analogous to the expedited grievance process.⁵ Accordingly, the Second Grievance should proceed in accordance with the expedited grievance process: that is, within five workdays of this ruling, the single management-step respondent must arrange a meeting with the grievant and then provide a written response.⁶ The grievant may then elect whether to advance or conclude her grievance and so indicate on the Form A, pursuant to the standard requirements of the grievance procedure.

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

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⁵ *Grievance Procedure Manual* § 3.4.

⁶ *Id.* §§ 3.2, 3.4. By mutual agreement of the parties, the agency head may also address the issue of qualification for hearing in the single management-step response. *See id.* §§ 3.4, 4.2.

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