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COMPLIANCE RULING

In the matter of the Department of Corrections
Ruling Number 2024-5639
November 3, 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 July 24, 2023 grievance with the Department of Corrections (“the agency”). As described below, EDR finds that the agency has corrected its noncompliance.

FACTS

On or about July 24, 2023, the grievant initiated a grievance with the agency regarding a disciplinary action. The grievance advanced to the third step, with the grievant and third-step respondent meeting on August 28, 2023. Having apparently received no further response from the third-step respondent, the grievant sought this ruling on October 31, 2023. Upon inquiry into the status of this grievance, the agency indicated that the third-step respondent had apparently completed a written response but had not sent it to the grievant. The third-step respondent has now issued his response to the grievance on November 2, 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

Technically speaking, the grievant's ruling request was premature because he had not first notified the agency head of noncompliance as required by the grievance procedure.⁴ However, the grievant is correct that the third-step respondent had failed to issue a written response to the grievance in a timely manner.⁵ Nonetheless, it is clear that the grievant has now received the third step response. 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.⁶ Because the grievant has received the third step response, he should respond to the agency as provided in the letter issued with the third step response within five workdays of the date of this ruling, indicating whether he wishes to conclude the grievance or request qualification for a hearing.⁷

EDR's rulings on matters of compliance are final and nonappealable.⁸

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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* § 6.3.

⁵ *Id.* § 3.3.

⁶ *Id.* § 6.1 (stating that a challenge of alleged noncompliance to EDR "will normally stop the grievance process temporarily").

⁷ *Id.* § 3.3.

⁸ *See* Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).