

Issue: Compliance – Grievance Procedure (other issue); Ruling Date: June 19, 2018; Ruling No. 2018-4721; Agency: Department of Social Services; Outcome: Agency in Compliance.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Equal Employment and Dispute Resolution

COMPLIANCE RULING

In the matter of the Virginia Department of Social Services
Ruling Number 2018-4721
June 19, 2018

The Department of Social Services (the “agency”) seeks a ruling from the Office of Equal Employment and Dispute Resolution (“EEDR”) concerning four grievances initiated by the grievant in January 2018, because the grievant has died. For the reasons set forth below, the agency’s request is granted as to three of the four grievances. Further instruction regarding the fourth grievance is provided in this ruling.

FACTS

On or about January 9, 2018, the grievant initiated two grievances, the first challenging his Employee Work Profile (“EWP”) and job title, and the second challenging the issuance of a Group I Written Notice for allegedly disruptive behavior. On or about January 17, 2018, the grievant initiated a grievance to challenge the issuance of a Group II Written Notice, with a five day suspension, for alleged refusal to comply with a supervisor’s instructions. On or about January 30, 2018, the grievant initiated another grievance, again challenging his EWP.

DISCUSSION

The grievance procedure does not address the impact of a grievant’s death on an existing grievance, and EEDR is unaware of any court decision addressing the issue. However, this issue has been addressed previously in EDR Ruling No. 2009-2317. In that ruling, it was essentially determined that a grievance can continue following the death of the grievant if material interests remain in the outcome of the grievance. For instance, in the case of a grievance involving a termination, the outcome of such a grievance could result in full or partial back pay and affect other benefits issues, which are certainly matters in which the grievant’s next of kin or other successor(s) may have an interest.¹

While none of these grievances challenge a termination, the January 17, 2018 grievance does challenge a disciplinary action accompanied by a loss of pay (via the grievant’s suspension from January 4, 2018 to January 10, 2018). Because monetary relief might be available if the grievant prevailed in the January 17, 2018 grievance, his estate or next of kin should be entitled to pursue any such relief (for example, lost wages due to the suspension) as a successor in interest.² The issues raised in the other three grievances are now essentially moot, and

¹ EDR Ruling No. 2009-2317.

² In cases at law, in the event of a party’s death, a successor in interest can be substituted for the party by motion. Sup. Ct. of Va. R. 3:17. The federal Merit Systems Protection Board also allows for the substitution of a successor

accordingly, may be administratively closed by the agency at this time. The January 17, 2018 grievance, however, must be permitted to proceed as described below.

A copy of this ruling is being sent to the grievant's last known address so that his next of kin are provided notice of these issues. If the grievant's next of kin or other representative wishes to continue this grievance as a successor in interest, he or she must notify the agency in writing of the individual who will serve in that role, as a substitute for the grievant, **within 30 calendar days of the date of this ruling.**³ Such individual must have the appropriate authority to represent and pursue the grievant's interests. If the agency objects to the substitution on any grounds, the agency can pursue that issue through the noncompliance provisions of the grievance procedure.⁴ Alternatively, if the grievant's representative does not wish to pursue this grievance, the agency should be notified.

If a representative is not substituted for the grievant within 30 calendar days of the date of this ruling, and no extension is granted, the agency may administratively close the grievance without any further action on its part. The grievance may be reopened only upon a timely showing by the grievant of just cause for the delay.

If either party has any questions regarding the grievance procedure, they may contact EEDR's toll-free AdviceLine at 1-888-232-3842.

EEDR's rulings on compliance are final and nonappealable.⁵



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in interest to an employee who dies after filing a matter with the Board, when the interests of the employee do not terminate upon his death. 5 C.F.R. § 1201.35. Such an approach appears just and appropriate in state grievance matters such as this as well.

³ If the grievant's representatives need additional time to appoint the appropriate individual with proper authority, a request for an extension should be made to the agency first. If denied, the representatives may raise these issues to EDR for a ruling. An extension will only be available for just cause.

⁴ See *Grievance Procedure Manual* § 6.3.

⁵ Va. Code § 2.2-1202.1(5).