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RECONSIDERED QUALIFICATION RULING

In the matter of the Department of Corrections
Ruling Number 2019-4940
June 7, 2019

The grievant has requested that the Office of Employment Dispute Resolution (“EDR”)¹ at the Virginia Department of Human Resource Management (“DHRM”) reconsider Ruling Number 2019-4932 (the “prior ruling”), which determined that his January 25, 2019 grievance with the Department of Corrections (the “agency”) was not qualified for a hearing. For the reasons described below, EDR declines to reconsider the prior ruling.

DISCUSSION

EDR does not generally reconsider its qualification rulings and will not do so without sufficient cause. For example, EDR may reconsider a ruling containing a mistake of fact, law, or policy where the party seeking reconsideration has no opportunity for appeal. However, clear and convincing evidence of such a mistake is necessary for reconsideration to be appropriate.²

Agency Compliance Issues

The grievance procedure requires both parties to address procedural noncompliance through a specific process.³ That process assures that the parties first communicate with each other about the noncompliance and resolve any compliance problems voluntarily, without EDR’s involvement.

Specifically, the party claiming noncompliance must notify the other party of any noncompliance in writing and allow five workdays for the opposing party to correct it.⁴ 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, which may in turn order the party to

¹ The Office of Equal Employment and Dispute Resolution has separated into two office areas: the Office of Employment Dispute Resolution and the Office of Equity, Diversity, and Inclusion. While full updates have not yet been made to the *Grievance Procedure Manual* to reflect this change, this Office will be referred to as “EDR” in this ruling. EDR’s role with regard to the grievance procedure remains the same.

² See EDR Ruling Nos. 2010-2502, 2010-2553 n.1.

³ *Grievance Procedure Manual* § 6.3.

⁴ See *id.*

correct the noncompliance or, in cases of substantial noncompliance, render a decision against the noncomplying party on any qualifiable issue. However, by proceeding with the grievance after becoming aware of a procedural violation, a party generally forfeits the right to challenge the noncompliance at a later time.⁵

Here, the grievant alleges that, during the management step resolution process, the agency's second step response was not timely under the grievance procedures. The agency submitted its first step response on January 29, 2019, and the grievant elected to advance his grievance to the second step on the same date. On February 11, 2019, the grievant advised the agency that its second step response was untimely. The agency submitted that response by letter dated February 15, 2019. On March 1, 2019, the grievant elected to advance his grievance to the third step. During the management step process, the grievant did not request that EDR issue a ruling finding the agency noncompliant with the grievance procedures and ordering it to correct the noncompliance. Any such request would have been moot after the agency cured its noncompliance by submitting its second step response, prompting the grievant to proceed to the third step. The timing of the agency's step responses in this case had no bearing on whether the grievance ultimately qualified for a hearing.

CONCLUSION

EDR has carefully considered the grievant's request for reconsideration and concludes that there are no grounds to reconsider or change the analysis of the underlying issues. While the grievant believes that the prior ruling on qualification should also have addressed the agency's alleged noncompliance during the management step resolution process, the grievant has not presented anything to indicate that a mistake of fact, law, or policy led the prior ruling to an incorrect result as to qualification. For these reasons, the grievant's request for reconsideration is denied and the determinations made in EDR Ruling Number 2019-4932 stand as originally issued.

EDR's qualification rulings are final and nonappealable.⁶



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⁵ *Id.*

⁶ *See* Va. Code § 2.2-1202.1(5).