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**COMMONWEALTH OF VIRGINIA**  
*Department Of Human Resource Management*  
*Office of Employment Dispute Resolution*

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**COMPLIANCE RULING**

In the matter of the Virginia Department of Transportation  
Ruling Numbers 2022-5349, 2022-5357, 2022-5358, 2022-5359  
February 8, 2022

The Virginia Department of Transportation (the “agency”) has requested compliance rulings from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) in relation to four grievances filed by the grievant in November 2021. The agency alleges that the grievant has failed to comply with the time limits set forth in the grievance procedure for advancing or concluding her grievances.

FACTS

The grievant filed a grievance on or about November 12, 2021; another grievance on or about November 20, 2021; and two additional grievances on or about November 22, 2021. On December 7, 2021, the second-step respondent provided a written response to the November 12 grievance. On December 15, 2021, the same manager provided a combined second-step response addressing the other three grievances. Each response declined to grant relief and provided procedural options for the grievant to advance or conclude the grievances.<sup>1</sup>

On January 4, 2022, the agency notified the grievant that it had received no indication whether she wished to advance or conclude her November 12 grievance.<sup>2</sup> On January 24, the agency sent a similar communication that it had received no indication whether the grievant wished to advance or conclude her three grievances filed from November 20 to 22. Each non-compliance letter advised that the grievant should correct the noncompliance by submitting her election to advance or conclude each grievance within five workdays. After receiving no further response from the grievant, the agency sent requests to EDR on January 14, 2022 and February 2, 2022 for compliance rulings allowing the agency to administratively close the four grievances.

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<sup>1</sup> The advancement option for the November 12 grievance, which followed the expedited process, was to request qualification from the agency head. The other three grievances used the standard Grievance Form A and, accordingly, consistent with the standard process, the advancement option provided was the third management step.

<sup>2</sup> It appears that the agency sent non-compliance letters to the grievant electronically via her personal email address. The grievant has advised EDR that the agency terminated her employment late in December 2021, before sending the letters.

## DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>3</sup> 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.<sup>4</sup> 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 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 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.<sup>5</sup>

In this case, the available facts indicate that, contrary to the grievance procedure's requirements, the grievant has not advanced or concluded any of her four grievances within five business days of receiving the agency's second-step response.<sup>6</sup> Moreover, approximately one month after submitting its second-step responses, the agency sent the grievant effective notice of noncompliance and advised her of the opportunity to correct it. At this time, the grievant has given no indication that she intends to take action to advance or conclude her grievances.

Therefore, because the grievant has neither advanced nor concluded her grievances at this time, she has failed to comply with the grievance procedure. To correct her non-compliance, the grievant must notify the agency's human resources office in writing that she wishes to advance or conclude her grievance(s) **within 10 workdays of the date of this ruling**. If she does not do so, the agency may administratively close the grievances without any further action on its part. The grievances may be reopened only upon a timely showing by the grievant of just cause for the delay (for example, a serious illness, or other circumstances beyond the grievant's control).

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<sup>3</sup> *Grievance Procedure Manual* § 6.3.

<sup>4</sup> *See id.*

<sup>5</sup> While in cases of substantial noncompliance with procedural rules the grievance statutes grant EDR the authority to render a decision on a qualifiable issue against a noncompliant party, 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 to be 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.

<sup>6</sup> *See Grievance Procedure Manual* §§ 3.2, 3.4. Typically, upon receiving notice of noncompliance, the noncompliant party has five **workdays** to correct the noncompliance. *See Grievance Procedure Manual* § 6.3. The grievance procedure defines a "workday" as the "[n]ormal work schedule (excluding authorized leave time) for the individual responsible for taking the required action." *Id.* at § 9. However, where the noncompliant party no longer works at the agency, and in the absence of special circumstances, EDR considers "workdays" to mean regular business days. *See* EDR Ruling No. 2020-5028.

EDR's rulings on matters of compliance are final and nonappealable.<sup>7</sup>

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<sup>7</sup> See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).