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COMPLIANCE RULING

In the matter of the Virginia Department of Social Services
Ruling Number 2020-4951
July 16, 2019

The grievant seeks a compliance ruling from the Office of Employment Dispute Resolution (“EDR”)¹ at the Department of Human Resource Management on whether her June 25, 2019 grievance with the Virginia Department of Social Services (the “agency”) is in compliance with the grievance procedure. Asserting that the grievance was not initiated timely, the agency has indicated its intention to administratively close the grievance. For the reasons set forth below, EDR determines that the grievance is timely and shall be permitted to proceed.

FACTS

In a meeting held on or about April 17, 2019, two supervisors counseled the grievant that she was overly confrontational with a coworker. They advised her to route work communications with the coworker through them when possible and to improve her communication style. The grievant sought clarification as to what prompted the complaints, including at a meeting on May 15, 2019, but she was not successful. Thus, she requested to pursue mediation with the supervisors and the coworker, while limiting her communications with the coworker for fear of further accusations. After initial discussions in late May with the agency’s mediation coordinator, the grievant inquired again on June 3 and June 11 as to whether and how she could move forward with mediation or other steps to improve the work relationships. As of June 11, those inquiries were still pending.

By June 25, 2019, the grievant still had received no affirmative response about addressing the ongoing tension with her coworker. Thus, she initiated a grievance on that date. She explained that, because she unsuccessfully “tried several times” to address the issues with management, “at this point it is out of my hands.” As relief, she requested that the agency investigate any accusations against her, seek her account of events involving her, and provide more support for employees to resolve conflicts. On June 26, 2019, the agency responded that it

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.

planned to administratively close her grievance as untimely filed. The grievant now appeals that determination.

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, 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

Here, while the grievance cites April 17, 2019 as the date the grievance occurred, its description of the issues identifies two ongoing patterns of workplace conduct: continuing dysfunction with the grievant's coworker, and the grievant's view that management consistently refuses or ignores her requests to help resolve that dysfunction. According to her grievance, she now fears that any communication with her coworker may give rise to accusations that threaten her employment. Thus, the grievance clearly addresses issues that the grievant was actively attempting to resolve through at least June 11, 2019. The agency's apparent lack of response to the grievant's mediation requests – effectively a denial of those requests – is reasonably viewed as part of the ongoing failure to help manage the employee conflict, as alleged in the grievance.

Although mediation may generally be a basis to extend the grievance procedure timelines only by mutual written agreement of the parties,⁴ the grievant here is not requesting an extension. Instead, she is grieving ongoing issues that she has continuously attempted to address via other methods, to no avail. Her mediation inquiries, being emails to the agency's mediation coordinator, put the agency on sufficient notice that the underlying issues were ongoing even if the grievant did not cite these specific communications by date on her Grievance Form A and attachments.

For the reasons discussed above, EDR concludes that the grievance initiated on June 25, 2019 is compliant with sections 2.2 and 2.4 of the *Grievance Procedure Manual* and must be permitted to proceed. The grievance must be returned to the first step-respondent, who must respond to the grievance **within five workdays of receipt of this ruling**. To the extent the agency believes it needs more information to respond to the grievant's allegations, the agency may request such information directly from the grievant in conjunction with the management resolution steps.

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 Graham v. Gonzales, No. 03-1951, 2005 U.S. Dist. LEXIS 36014, at *23-25 (D.D.C. Sept. 30, 2005) (applying *Morgan* to claim of retaliatory hostile work environment/harassment); Shorter v. Memphis Light, Gas & Water Co., 252 F. Supp. 2d 611, 629 n.4 (W.D. Tenn. 2003); see, e.g., EDR Ruling No. 2015-4118; EDR Ruling No. 2014-3695 (“[T]he time period(s) listed in the box for ‘date grievance occurred’ on Grievance Form A is not the sole determining factor of what issues are challenged in a grievance.”)

⁴ See *Grievance Procedure Manual* § 1.3.

EDR's rulings on matters of compliance are final and nonappealable.⁵



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