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COMPLIANCE RULING

In the matter of the Virginia Department of Corrections
Ruling Number 2020-4960
August 2, 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 July 18, 2019 grievance with the Virginia Department of Corrections (the “agency”) is in compliance with the grievance procedure. Asserting that this grievance is duplicative of an earlier grievance, the agency has indicated its intention to administratively close the grievance. For the reasons set forth below, EDR finds that the grievance is not duplicative and shall be permitted to proceed.

FACTS

On or about April 1, 2019, the grievant filed a grievance (the “First Grievance”) alleging “harassment in the workplace/threatening hostile work environment” based on intimidating behavior from another agency employee.² According to the agency’s first step response on May 2, 2019, the warden at their facility responded by directing the other employee not to enter the grievant’s work space except in case of an emergency and by assigning the two employees to different “learning teams.” The grievant agreed with this resolution and therefore did not advance her grievance to the second step.

On or about July 18, 2019,³ the grievant filed another grievance (the “Second Grievance”) in which she alleged “retaliation after filing a grievance . . . , contesting actions of

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 The First Grievance recounted previous interactions between the grievant and the other employee in which he had allegedly approached her workspace in an intimidating manner with no work-related reason to do so. The grievant obtained a protective order against the other employee in early 2019, requiring him to stay at least 100 feet away from her. When the warden met with the two employees to discuss these incidents, the other employee became angry with the grievant during the meeting and threatened to circulate negative information about her within the agency.

³ The Grievance Form A indicates that the grievant first signed it on July 8, 2019. However, the form indicates that the grievance occurred on July 12, 2019; this date is confirmed by an attachment dated July 15, 2019. The Form A is date-stamped as having been received at the grievant’s facility on July 18, 2019. For purposes of this ruling, and

institution, hostile work environment and harassment in the workplace.” To support her allegations, the grievant cited a meeting on July 12, 2019, which she learned she was expected to attend with the harassing coworker identified in the First Grievance. When she objected to being present with the coworker, the warden allegedly responded that “we are now going back to normal operations,” and he became upset with the grievant after she reminded him of the First Grievance’s resolution. The Second Grievance sought “disciplinary action to lead to a safe, non-intimidating and non-threatening environment” and “no retaliation.” On July 19, the agency notified the grievant that the Second Grievance had been administratively closed because it raised the same issues as the First Grievance. 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.⁴ 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.⁵ However, a grievance may not challenge the same management action challenged by another grievance.⁶

Here, although the First and Second Grievances both challenge the grievant’s alleged harassing and/or hostile work environment, they are not duplicative. The First Grievance sought action from the agency to prevent harassing behavior from the grievant’s coworker; such action apparently was granted by the warden on May 2, 2019. The Second Grievance takes issue with the conduct and outcome of the grievant’s meeting with her facility’s warden on July 12, 2019. That outcome, as alleged in the Second Grievance, was to rescind the agreed resolution of the First Grievance and, allegedly, to retaliate against the grievant for raising the First Grievance – acts that necessarily occurred after the initiation of the First Grievance.

In addition, the Second Grievance’s references to a harassing and/or hostile work environment created by her coworker are reasonably read as allegations of an ongoing or recurring workplace condition tolerated by the agency, rather than allegations that merely duplicate issues already addressed through the First Grievance. Although the alleged intimidating behavior that sparked the grievant’s concerns was the subject of the First Grievance, the grievant appears to believe that the coworker maintains the same intent to intimidate her at work and that the agency is failing to address that circumstance. Whether or not the agency considers the grievant’s belief to be reasonable, the Second Grievance relates on its face to an ongoing workplace issue. Accordingly, administrative closure is not appropriate at this time.

For the reasons discussed above, EDR concludes that the grievance initiated on or about July 18, 2019 is compliant with sections 2.2 and 2.4 of the *Grievance Procedure Manual* and

because none of these dates appears to raise a timeliness issue, EDR will treat the grievance as having been initiated on July 18, 2019.

⁴ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.2.

⁵ 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).

⁶ *Grievance Procedure Manual* § 2.4.

must be permitted to proceed. The grievance must be returned to an appropriate 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.

EDR's rulings on matters of compliance are final and nonappealable.⁷



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⁷ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).