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COMPLIANCE RULING

In the matter of the Virginia Department of Corrections
Ruling Numbers 2021-5159, 2021-5160
September 22, 2020

The Virginia Department of Corrections (the “agency”) has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (DHRM) in relation to the grievant’s grievances initiated on April 7 and 14, 2020. The agency alleges that the grievant has failed to comply with the time limits set forth in the grievance procedure for advancing or concluding his grievance.

FACTS

On or about April 7, 2020, the grievant initiated a grievance with the agency regarding the agency’s employee temperature-check practices. On or about April 14, 2020, he initiated a second grievance which referenced the first but articulated additional allegations. The third-step respondent provided a single written response dated June 30, 2020, which addressed the relief sought in both grievances and appears to be reflected on each Grievance Form A. The third-step response appears to have been mailed to the grievant on or about July 6, 2020. By letter dated July 28, 2020, the agency notified the grievant that it had not received an indication from him whether he wished to advance or conclude his grievance.¹ The letter instructed the grievant to return the Grievance Form A within five workdays of receipt of the letter. On September 10, 2020, having received no further response from the grievant, the agency requested that EDR issue a compliance ruling allowing the agency to administratively close the grievance.²

¹ The mailing of correspondence, properly addressed and stamped, raises a presumption of receipt of the correspondence by the addressee. *E.g.*, *Washington v. Anderson*, 236 Va. 316, 322, 373 S.E.2d 712, 715 (1988). Accordingly, for purposes of this ruling EDR will assume the grievant received the agency’s notice of noncompliance sent by regular mail because there is nothing to indicate that it was improperly addressed.

² Although the agency’s notice of noncompliance and closure request do not explicitly reference both grievances, this ambiguity appears to be an oversight. A reasonable interpretation of these communications is that they relate to the agency’s third-step response as sent to the grievant, a mailing which appears to have included both the April 7 and April 14 grievances with the third-step field completed on each Form A.

DISCUSSION

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 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.⁵

In this case, the available facts show that, contrary to the grievance procedure's requirements, the grievant has not advanced or concluded either of his grievances within five workdays of receiving the agency's third-step response.⁶ Moreover, more than three weeks after providing its third-step response to the grievances, the agency sent the grievant effective notice of his noncompliance and advised him of the opportunity to correct it. Yet no evidence suggests that the grievant has subsequently taken appropriate steps to advance or conclude his grievances.

Because the grievant has apparently neither advanced nor concluded his grievances at this time, he has failed to comply with the grievance procedure. EDR therefore orders the grievant to correct his noncompliance **within 10 workdays of the date of this ruling** by notifying his human resources office in writing that he wishes either to advance or conclude the grievances. If he 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).

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

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³ *Grievance Procedure Manual* § 6.3.

⁴ *See id.*

⁵ 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.

⁶ *See Grievance Procedure Manual* § 3.3.

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