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COMPLIANCE RULING

In the matter of the Department of Behavioral Health and Developmental Services
Ruling Number 2020-4996
October 10, 2019

The Department of Behavioral Health and Developmental Services (the “agency”) seeks a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management¹ concerning the grievant’s September 20, 2019 grievance.

FACTS

The grievant was issued a Group II Written Notice for failure to follow a supervisor’s instructions on May 2, 2019, and was terminated due to her accumulation of disciplinary action.² The Written Notice arose out of an incident that occurred on April 12, 2019. Shortly after the April 12 incident, the grievant went out of work for an approved medical absence. The agency rescinded the May 2 Written Notice and the grievant’s termination while she was out of work, and notified her that it intended to reissue the disciplinary action to her after she returned.

On August 22, 2019, after she returned to work, the grievant received the reissued Group II Written Notice for failure to follow a supervisor’s instructions based on the April 12 incident. The reissued Written Notice was also accompanied by termination based on her accumulation of discipline. The grievant submitted a dismissal grievance to EDR on September 20, 2019, stating that she was “grieving the Group II Written Notice . . . with Possible Suspension/Termination issued to [her] . . . on May 2, 2019 . . . [,] rescinded in May and reissued August 22, 2019.” The grievance identifies the grievant’s date of dismissal as both May 2, 2019 and August 22, 2019. Upon receiving a copy of the grievance paperwork, the agency requested a compliance ruling from EDR to clarify the issues that should proceed to hearing.

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 DHRM Policy 1.60, *Standards of Conduct*, § (B)(2)(b) (stating that the issuance of “[a] second active Group II Notice normally should result in termination”).

DISCUSSION

If a Grievance Form A does not comply with the requirements for initiating a grievance, the agency may notify the employee, using the Grievance Form A, that the grievance will be administratively closed.³ Because dismissal grievances are initiated directly with EDR, an agency is essentially unable to follow this process as outlined. Accordingly, the agency requests a ruling from this Office regarding the issue of alleged noncompliance. In particular, the agency alleges that the grievance is not timely to challenge the May 2, 2019 Written Notice because that management action occurred more than 30 calendar days before the grievance was filed on September 20, and that any challenge to the May 2 Written Notice is moot because it has been rescinded. The agency further contends that, to the extent additional documents are attached to the grievance “in an effort to challenge other issues,” those matters also occurred more than 30 calendar days before she filed the grievance. In short, the agency argues that “the only issue that should qualify for hearing is the Written Notice and termination issued on August 22, 2019.”

Having thoroughly reviewed the submissions of the parties, EDR agrees with the agency’s arguments. Even if a grievance challenges a management action that would ordinarily qualify for a hearing (e.g., a Written Notice of formal discipline), there are still some cases when qualification is inappropriate. For example, during the resolution steps, an issue may have become moot, either because the agency granted the specific relief requested by the grievant or an interim event prevents a hearing officer from being able to grant any meaningful relief. Additionally, qualification may be inappropriate when the hearing officer does not have the authority to grant the relief requested by the grievant and no other effectual relief is available. In this case, the agency rescinded the May 2 Written Notice shortly after it was issued to the grievant. As a result, a hearing officer would be unable to provide the grievant with any additional relief beyond that which has already been granted to her by the agency with regard to that Written Notice. This issue is, therefore, moot and will not proceed further.⁴

In addition, it is unclear what “other issues” the grievant may be attempting to challenge in her attachment to the grievance, although the grievant’s submission does include documents relating to an allegation that she verbally abused a patient in 2017. The grievance attachments further suggest that she filed at least one complaint with the Equal Employment Opportunity Commission (“EEOC”) in July 2019, and may have had previous contact with the EEOC before July 2019. Most importantly, however, the grievant has unequivocally indicated that the management action she is challenging is the issuance of the Group II Written Notice with termination, which she received on August 22, 2019. Accordingly, the August 22 Written Notice and the grievant’s termination will be the only matters before the hearing officer for adjudication at the hearing. To the extent the rescinded May 2 Written Notice addresses the same alleged misconduct and is relevant, the grievant may present background evidence relating to that action. Likewise, the grievant may present evidence about previous allegations of misconduct and/or

³ *Grievance Procedure Manual* § 6.2.

⁴ Because there is no reason for this issue to proceed to a hearing, EDR need not directly address whether the grievance is timely to challenge the May 2 Written Notice.

employment-related complaints as background evidence and/or theories⁵ in support of her challenge to the August 22 Written Notice.

For the reasons set forth above, EDR concludes that the grievant's September 20, 2019 dismissal grievance shall proceed as discussed above. The agency is directed to submit a fully completed Form B to EDR **within five workdays of the date of this ruling**. EDR's rulings on matters of compliance are final and nonappealable.⁶



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Director
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⁵ As EDR has ruled, the "claims" or "issues" raised by a grievance are the management actions being challenged. *See, e.g.*, EDR Ruling Nos. 2013-3480, 2013-3495; EDR Ruling Nos. 2007-1561, 2007-1587.

⁶ *See* Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).