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COMPLIANCE RULING

In the matter of the Virginia Department of Corrections
Ruling Number 2020-5059
February 28, 2020

The Virginia Department of Corrections (the “agency”) has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”)¹ at the Department of Human Resource Management (DHRM) in relation to the grievant’s December 13, 2019 grievance. 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 grievance.

FACTS

On December 13, 2019, the grievant initiated a grievance with the agency. On January 6, 2020, the agency’s second step respondent met with the grievant to discuss the issues she had raised; the second step respondent then provided by hand-delivery a written response dated January 10, 2020. On February 13, 2020, the agency notified the grievant by mailed letter that it had not received a response on the Grievance Form A as to whether she wished to conclude her grievance or advance it to the next resolution step.² The agency advised that, if the grievant did not return her Form A within five workdays of her receipt of the letter, the agency would consider her to be in noncompliance with the grievance procedure. Receiving no further response from the grievant, the agency requested that EDR issue a compliance ruling allowing the agency to administratively close the grievance.

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

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 It appears that this letter misidentified the last completed resolution step as the first step, when in fact the grievance began at the second step. Notwithstanding any error in that regard, EDR views the agency’s notice of noncompliance as effective for purposes of the grievance procedure.

³ *Grievance Procedure Manual* § 6.3.

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 indicate that, contrary to the grievance procedure's requirements, the grievant did not advance or conclude her grievance within five workdays of receiving the agency's second step response.⁶ Moreover, more than one month after submitting its second step response, the agency notified the grievant of her noncompliance and advised her of the opportunity to correct it. Yet no evidence suggests that the grievant has subsequently taken appropriate steps to advance or conclude her grievance.

Because the grievant has apparently neither advanced nor concluded her grievance at this time, she has failed to comply with the grievance procedure. EDR therefore orders the grievant to correct her noncompliance **within 10 workdays of the date of this ruling** by notifying her human resources office in writing that she wishes either to conclude the grievance or proceed to the third resolution step. If she does not do so, the agency may administratively close the grievance without any further action on its part. The grievance 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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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* § 3.2.

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