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COMPLIANCE RULING

In the matter of the Department of Criminal Justice Services
Ruling Number 2020-5063
March 23, 2020

The Department of Criminal Justice Services (the “agency”) has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management¹ (“DHRM”) on whether the grievant’s December 11, 2019 grievance complies with the grievance procedure.

FACTS

On or about December 11, 2019, the grievant initiated a grievance with the agency challenging its policy “related to hours worked and the flexibility of making up hours within the same work week,” as well as management’s alleged “adding of FMLA stipulations for FMLA that has already been submitted and approved” and alteration of her timesheets “without discussion, communication, or justification.” The grievant also claimed that agency management had created a hostile work environment through “constant scrutiny related to [her] work hours, [her] FMLAs, and mail procedures.” As relief, the grievant requested that the agency comply with FMLA requirements, allow her greater flexibility to modify her hours of work, communicate with her about issues with her timesheets, and cease the actions that she believed were creating a hostile work environment.

Several days after initiating the grievance, the grievant went out of work on an approved medical leave of absence. The parties placed the grievance on hold until the grievant returned to work. The grievant subsequently resigned from her position with the agency effective February 24, 2020. After her resignation, the agency contacted the grievant to inquire whether she wished to proceed with the grievance, and the grievant responded that she did. The agency has now requested a compliance ruling from EDR seeking to administratively close the grievance on the basis that the issues are moot and/or resolved.

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.

DISCUSSION

In general, “any management actions or omissions may be grieved” by an employee, so long as the grievance complies with the initiation requirements of the grievance procedure.² However, an employee’s decision to resign after initiating a grievance may render challenges to certain management actions or omissions moot. In such a situation, EDR will consider an agency’s request to administratively close a former employee’s grievance, in part, on the theory that a grievance may not be “used to . . . impede the efficient operations of government.”³ For example, further relief may not be available through the grievance procedure after an employee has resigned, even though the challenged management actions may appropriately be the subject of a grievance.⁴

In this case, the agency essentially argues that no relief is available to address the grievant’s concerns because of her resignation. The grievant has explained to the agency that she believes the issues are still “relevant” because similar actions “have been done to others, and may possibly still be occurring or would occur in the future.” The grievant also appears to claim that, while some issues related to her use of leave under the Family and Medical Leave Act (“FMLA”) were addressed by the agency, her “timesheets need to be re-reviewed” more thoroughly. Furthermore, the grievant contacted EDR while this ruling was pending and asserted that, during her medical absence after initiating the grievance, two potential employers contacted the agency for reference checks.⁵ The grievant alleges that agency management gave a negative reference to one of the employers, apparently as part of the pattern of alleged workplace harassment described in the grievance.⁶ Having carefully considered the parties’ arguments, EDR finds that the issues raised in the grievance have been resolved by the agency, are moot because of her resignation, or are otherwise not susceptible to relief through the grievance procedure, and thus there is no basis for the grievance to proceed.

The grievance form lists November 19, 2019 as the date the grievance occurred. On that date, the grievant received an email from the agency containing guidance about her use of FMLA leave during the preceding week. Noting that the grievant had approval to use FMLA leave for herself and two family members, the agency also requested doctors’ notes from the grievant to ensure clarity about her use of FMLA leave going forward. It appears that the agency corrected issues with the grievant’s timesheet from the preceding week to accurately reflect an absence that was FMLA-approved.

The grievant’s remaining arguments relating to her use of FMLA center around an incident that occurred on November 18, 2019. The grievant used 6 hours of leave that day, some for her own medical appointment and the remainder for a family member’s medical appointment. The family member’s medical appointment was unexpectedly cancelled after the grievant had already left work. The agency adjusted the grievant’s timesheet to show that a portion of her leave on November 18 was FMLA-approved (for her medical appointment), and the remainder was not

² *Grievance Procedure Manual* § 2.4.

³ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4(4); see EDR Ruling No. 2020-4973.

⁴ See, e.g., EDR Ruling No. 2018-4722; EDR Ruling No. 2018-4724; EDR Ruling No. 2018-4586.


⁵ While concerning if true, these appear to be new matters that cannot be added to the grievance at this stage. See *Grievance Procedure Manual* § 2.4.

⁶ The grievant also stated that she would send EDR additional documentation about her use of FMLA leave. The grievant has not sent this information to EDR and, as of the date of this ruling, has not responded to an inquiry from EDR about whether she still intends to provide other documentation to be considered for this ruling.

FMLA-approved (because the family member’s medical appointment did not actually take place). After the grievant resigned, the agency further adjusted her timesheet so that all of her leave on November 18 was FMLA-approved. While the grievant’s request for a thorough review of her timesheets is understandable, she has not identified any specific dates within the 30 calendar days preceding her initiation of the grievance where the agency allegedly failed to account properly for her FMLA leave, other than those described above.⁷ As a result, EDR finds that there are no remaining issues relating to the grievant’s use of FMLA that may be resolved through the grievance procedure.⁸

The remaining matters for which the grievant requests relief are the agency’s practices regarding schedule adjustments and the approval of timesheets, as well as alleged workplace harassment. EDR finds that these issues have been rendered moot by the grievant’s resignation. For example, as to the grievant’s arguments about timesheets and hours of work, the grievance process could result in an order from a hearing officer for the agency to reapply policy properly, if it had been misapplied and/or unfairly applied as to the grievant’s employment.⁹ Likewise, a hearing officer could direct the agency to “to create an environment free from” allegedly harassing behavior and/or “take appropriate corrective actions necessary to cure the violation and/or minimize its reoccurrence.”¹⁰ Even if the grievant were able to establish that the agency’s actions in this case were improper, the remedies available through the grievance process would have no material effect because she is no longer employed by the agency. Although EDR is sympathetic to the grievant’s frustration over issues that she believes negatively impacted her work environment, neither the agency nor a hearing officer has the ability to take further action in a way that would provide meaningful relief due to her resignation.¹¹

Accordingly, and for the reasons discussed above, EDR finds that the grievant’s December 11, 2019 grievance should be administratively closed and will not proceed further. EDR’s rulings on matters of compliance are final and nonappealable.¹²



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⁷ See *Grievance Procedure Manual* § 2.2 (stating that a grievance must be filed within 30 calendar days of the challenged management action or omission).

⁸ This ruling makes no determination as to whether some other legal or equitable remedy may be available to the grievant in relation to her FMLA-related claims, but only that further relief is not available to address those issues as a matter of the grievance procedure.

⁹ *Rules for Conducting Grievance Hearings* § VI(C)(1). In cases where there is no other outcome under policy, a hearing officer “may order the agency to implement those particular policy mandates.” *Id.*

¹⁰ *Id.* § VI(C)(3).

¹¹ Moreover, and to the extent the grievant may be attempting to challenge that agency’s treatment of other employees, such a claim may not be the subject of a grievance. *Grievance Procedure Manual* § 2.4 (stating that a grievance must “[p]ertain[] directly and personally to the employee’s own employment”).

¹² See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).