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COMPLIANCE RULING

In the matter of the Virginia Department of Corrections
Ruling Number 2020-5083
May 1, 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 May 24, 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 or about May 24, 2019, the grievant initiated a grievance with the agency. On February 7, 2020, the agency’s third step respondent met with the grievant to discuss the issues she had raised; the third step respondent then provided a written response dated February 24, 2020, which provided instructions for advancing or concluding the grievance. By letter dated April 6, 2020, the agency notified the grievant that it had not received an indication from her whether she wished to advance or conclude her grievance following the third step response. The letter requested a response by April 9, 2020. On April 20, 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.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.² 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.³ If the

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 *Grievance Procedure Manual* § 6.3.

³ *See id.*

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.⁴

In this case, the available facts indicate that, while the grievant did not advance or conclude her grievance within the time limits required by the grievance procedure,⁵ the agency's April 6, 2020 letter was incomplete as a notice of noncompliance. In its letter of April 6, the agency appears to have requested a shorter response time than five workdays from the date of the letter.⁶ Nevertheless, because more than two months have passed since the agency issued its third step response, EDR has independently contacted the grievant regarding the issue of non-compliance and the opportunity to correct it. This office has received no response, and no evidence suggests that the grievant has subsequently taken appropriate steps to advance or conclude her grievance.

Therefore, 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 to advance or conclude her grievance. 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 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.

⁵ See *Grievance Procedure Manual* § 3.3.

⁶ See *id.* at § 6.3. The letter should also have more clearly indicated that the agency was asserting the grievant had not complied with the grievance procedure.

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