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COMPLIANCE RULING

In the matter of the Virginia Department of Corrections
Ruling Number 2020-5093
May 11, 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 February 3, 2020 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 his grievance.

FACTS

On or about February 3, 2020, the grievant initiated a grievance with the agency. On March 24, 2020, the agency’s second step respondent provided a written response that included instructions for advancing or concluding the grievance. By letter dated April 15, 2020, the agency requested that the grievant indicate on the Grievance Form A whether he wished to advance or conclude his grievance and return the form to the agency within five workdays. On May 5, 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 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

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.*

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 the grievant did not advance or conclude his grievance within the time limits required by the grievance procedure, and the agency's April 15, 2020 letter effectively notified the grievant of his noncompliance.⁵ Moreover, more than one month has passed since the agency issued its second step response, and no evidence suggests that the grievant has subsequently taken appropriate steps to advance or conclude his grievance.

Therefore, because the grievant has apparently neither advanced nor concluded his grievance 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 to advance or conclude his grievance. If he 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.⁶



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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* § 3.2; *id.* at § 6.3. Although the agency's April 15 letter ideally would have directly referenced noncompliance with the grievance procedure, the letter nevertheless provided effective notice that the agency had not received a response from the grievant that would have satisfied section 3.2 of the *Grievance Procedure Manual*.

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