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COMPLIANCE RULING

In the matter of the Department of Corrections
Ruling Number 2020-5106
June 16, 2020

The Department of Corrections (the “agency”) has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management¹ in relation to the grievant's April 17, 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 her grievance.

FACTS

On or about April 17, 2020, the grievant initiated a grievance with the agency. The agency issued a second step response to the grievant on or about May 1, 2020.² Having received no further response from the grievant indicating whether she wished to advance or conclude the grievance, the agency sent a notice of noncompliance to her by U.S. Mail on May 17, 2020. In its notice of noncompliance, the agency requested a response from the grievant within five workdays of her receipt of the notice. However, the agency appears to have misspelled the grievant’s mailing address on the notice of noncompliance. Based on the grievant’s alleged noncompliance with the grievance procedure, the agency now seeks a compliance ruling allowing it 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 problems voluntarily, without EDR's involvement. Specifically, the party claiming noncompliance must notify the other party in writing and allow

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 The information in the grievance record indicates that the agency sent copies of the second step response to the grievant by email on May 2 and May 10, 2020.

³ *Grievance Procedure Manual* § 6.3.

five workdays for the opposing party to correct any noncompliance.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, who 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

When an agency has sent a notice of noncompliance to a grievant's address via U.S. Mail, and in the absence of information to indicate that the mailing was improperly addressed, EDR assumes that it has been delivered.⁶ In this case, however, the grievant's street address appears to be misspelled on the notice of noncompliance, and thus EDR cannot presume that she has received it. The agency's request for a compliance ruling therefore appears to be premature because there is no evidence to demonstrate that it first notified the grievant in writing of the alleged procedural violation. Ordinarily, this is a situation in which EDR would direct the agency to give written notice of the alleged noncompliance to the grievant and allow her five workdays to correct any noncompliance before seeking a compliance ruling. Based on a review of the information submitted by the parties, however, it is evident that more than five workdays have elapsed since the second step response was emailed to the grievant and she has not yet responded. Moreover, the grievant has received notice of her noncompliance through correspondence involved in this ruling as well as this ruling itself.⁷

Accordingly, and in the interest of expeditiously resolving the issues raised in the grievance, the grievant is ordered to contact her human resources office and indicate whether she wishes either to conclude the grievance or advance to the third step **within 10 workdays of the date of this ruling**.⁸ 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).

⁴ *See id.*

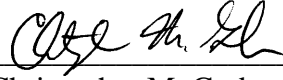
⁵ While in cases of substantial noncompliance with procedural rules the grievance statutes grant EDR the authority to render a decision on a qualifiable issue against a noncompliant party, EDR favors having grievances decided on the merits rather than procedural violations. Thus, EDR will *typically* order noncompliance corrected before rendering a decision against a noncompliant party. However, where a party's noncompliance appears 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 *E.g.*, *Washington v. Anderson*, 236 Va. 316, 322, 373 S.E.2d 712, 715 (1988) (holding that the mailing of correspondence, properly addressed and stamped, raises a presumption of receipt of the correspondence by the addressee).

⁷ While this ruling was pending, EDR attempted to contact the grievant to determine whether she intends to proceed with the grievance or considers the grievance concluded. The grievant did not respond to EDR's inquiry.

⁸ *See Grievance Procedure Manual* § 3.2.

EDR's ruling on matters of compliance are final and nonappealable.⁹



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⁹ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).