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COMPLIANCE RULING

In the matter of the Department of Corrections
Ruling Number 2021-5191
April 23, 2021

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) on whether his September 24, 2020 grievance with the Department of Corrections (“the agency”) complies with the grievance procedure. While this ruling was pending, the grievant also identified the agency’s alleged failure to comply with the grievance procedure in timely responding to his grievance. Both matters will be addressed in this ruling.

The grievance procedure provides that a grievance must “[p]ertain[] directly and personally to the employee’s own employment.”¹ If a grievance does not meet this requirement, the agency may notify the employee that the grievance will be administratively closed,² which the agency did in this case.³ The grievant has requested a compliance ruling from EDR on this question.

In this grievance, the grievant has alleged that the agency is “engaging in retaliatory and systemic racist behavior toward employees as it relates to promotional practices, moving staff who are unwilling and unable to move in an effort to make them quit, and discipline.” The grievance includes no other details about the allegations. The grievant indicates in the grievance that he “will provide specifics if allowed to speak to an UNBIASED investigator not affiliated with the [agency].” In reviewing the grievance paperwork, EDR cannot find any management actions or inactions that pertain directly and personally to the grievant’s employment. Consequently, while the grievant assuredly raises serious concerns, they are not matters that can be addressed through the grievance procedure if they do not pertain directly and personally to his employment.⁴ As such, the agency’s determination that the grievance should be administratively closed is appropriate.

¹ *Grievance Procedure Manual* § 2.4.

² *Id.*

³ The agency has also asserted that the grievance did not identify any issue that had occurred within the previous 30 calendar days and, accordingly, is also untimely. *Grievance Procedure Manual* §§ 2.2., 2.4. EDR need not reach the issue of timeliness in this ruling.

⁴ *See Grievance Procedure Manual* § 2.4.

The grievant has additionally raised the agency's failure to comply with the grievance procedure in how and when it responded to this grievance. The grievant states that he filed the grievance on September 24, 2020, and received no response. He states that he provided a notice of noncompliance to the agency head on December 11, 2020, and received no response. The grievant was then notified on December 18, 2020, that his grievance was being administratively closed.

As an initial point, this question of compliance with the grievance procedure is largely moot because the grievance is now administratively closed. However, EDR will note for the record that although the grievant states he did not receive a response to his grievance, a first-step respondent provided an initial response on or about September 25, 2020. This response indicates that the first-step respondent sought additional information about the grievance from the grievant, but he declined to provide anything further. Following that response, there is no indication in the record that the grievant provided the grievance to the second-step respondent, as is generally required in the grievance process.⁵ The grievant additionally asserts that the agency "failed to investigate in a timely and proper matter." While the grievant appears to assert that the agency was not compliant with the grievance procedure in failing to investigate the issues he raised, the grievance paperwork also makes clear that the grievant did not want the agency to investigate those matters. Nevertheless, had this grievance not been administratively closed, EDR would not have found that the agency failed to comply with the grievance procedure because there is no indication on the grievance form that the grievant sought to proceed to the next step of the grievance process after receiving a response from the first-step respondent.

In conclusion, while this grievance will remain closed, the issues identified in the grievance may appropriately be addressed in a different process or investigation. Should the grievant wish to file a complaint about the issues identified in his September 24, 2020 grievance, he can do so with the agency's human resources office, the federal Equal Employment Opportunity Commission, and/or another appropriate entity (if he has not already done so).

Accordingly, EDR concludes that the agency properly determined that the grievance should be administratively closed. The parties are advised that the grievance should be marked as concluded due to noncompliance and no further action is required. EDR's rulings on matters of compliance are final and nonappealable.⁶

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⁵ *Grievance Procedure Manual* § 3.1.

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