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COMPLIANCE RULING

In the matter of the Department of Behavioral Health and Developmental Services
Ruling Number 2021-5239
April 1, 2021

The Department of Behavioral Health and Developmental Services (the “agency”) has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management in relation to the grievant’s January 22, 2021 grievance.

FACTS

On or about January 22, 2021, the grievant submitted a dismissal grievance directly to EDR challenging her apparent separation from employment. The agency requested an access ruling from EDR, arguing that the grievant did not have access to the grievance procedure to challenge her separation. In EDR Ruling Number 2021-5209, this Office determined that the grievance must be returned to the agency to proceed using the expedited grievance process. We directed the agency to contact the grievant to schedule the single management step meeting within ten workdays of the date of the ruling.¹

Based on the information provided by the agency, the parties agreed to schedule the single management step meeting for March 10, 2021; however, the grievant failed to attend the meeting or immediately contact the agency to reschedule the meeting. On the following day, March 11, the agency mailed a notice of noncompliance to the grievant by both certified and regular mail.² In its notice of noncompliance, the agency requested that the grievant contact agency management within five workdays to reschedule the meeting for another date. The grievant does not appear to have contacted the agency to reschedule the single management step meeting or otherwise proceed with her grievance. Based on the grievant’s alleged noncompliance with the grievance procedure, the agency seeks a compliance ruling allowing it to administratively close the grievance.

¹ EDR Ruling No. 2021-5209 at 4-5.

² Based on the tracking information provided by the agency, it appears that the certified mailing containing the notice of noncompliance was returned unclaimed. However, the mailing of correspondence, properly addressed and stamped, raises a presumption of receipt of the correspondence by the addressee. *E.g.*, *Washington v. Anderson*, 236 Va. 316, 322, 373 S.E.2d 712, 715 (1988). For purposes of this ruling, therefore, EDR will assume the grievant received the agency’s notice of noncompliance sent by regular mail because there is nothing to indicate that it was improperly addressed.

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 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

Based on a review of the information submitted by the agency in this case, it is evident that the grievant has not taken action to proceed with her grievance since she initially agreed to schedule the single management step meeting on March 10, 2021. The grievant did not attend the meeting on March 10, nor does she appear to have contacted the agency to reschedule the meeting. Moreover, the agency has notified the grievant of her noncompliance and she has not responded. In short, the evidence before EDR demonstrates that the grievant has not contacted the agency about the single management step meeting specifically or her grievance in general since at least March 10, the originally scheduled date of the single management step meeting.

Accordingly, and in the interest of expeditiously resolving the issues raised in the grievance, the grievant is ordered to contact either the single-management-step respondent or her human resources office to schedule the meeting **within ten workdays of the date of this ruling.**⁶ If she does not, 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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³ *Grievance Procedure Manual* § 6.3.

⁴ *See id.*

⁵ Although the grievance statutes grant EDR the authority to render a decision on a qualifiable issue against a noncompliant party in cases of substantial noncompliance with procedural rules, 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 *See Grievance Procedure Manual* §§ 3.2, 3.4.

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