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COMPLIANCE RULING

In the matter of George Mason University
Ruling Number 2021-5192
January 8, 2021

George Mason University (the “university”) has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) in relation to the grievant’s December 14, 2020 dismissal grievance.

FACTS

The grievant, through counsel, submitted a dismissal grievance to EDR by email on December 14, 2020. The dismissal grievance challenges the grievant’s receipt of a Group III Written Notice with termination effective on December 2, 2020. Broadly, the circumstances leading to the disciplinary action arose out of the grievant’s alleged failure to comply with the university’s safety procedures for limiting the spread of COVID-19.

In an attachment to the dismissal grievance, the grievant has identified seven issues as the “basis of [his] grievance”: (1) the formal discipline issued to him, (2) his dismissal, (3) misapplication or unfair application of DHRM Policy 1.60, *Standards of Conduct* in relation to the discipline and his termination; (4) misapplication of the university’s procedure regarding investigations; (5) improper use of administrative leave with pay prior to his termination; (6) a “baseless performance evaluation,” apparently in the form of the discipline issued to him, due to his positive COVID-19 test result; and (7) retaliation for raising concerns about university management and using the grievance process. As relief, the grievant requests that his record be cleared of “all improper discipline,” payment of his attorneys’ fees by the university, a work environment free from retaliation, back pay, and reinstatement to his former position.

In response to EDR’s notification of receipt of the dismissal grievance, the university has requested a compliance ruling on whether several of the listed issues may be addressed at the hearing on the disciplinary action to which the grievant is entitled.¹

¹ Va. Code § 2.2-3004(A); *Grievance Procedure Manual* § 4.1(a).

DISCUSSION

In its request for a ruling, the university does not dispute that the grievant has appropriately challenged his receipt of the Written Notice and his termination or that those matters should proceed to a hearing. The university instead questions whether four alleged “independent wrongful acts and violations of state and agency policies” may be addressed at the hearing on the discipline. The alleged wrongful acts in question, as described by the grievant, include the investigation that led to the issuance of the discipline, the university’s categorization of the his misconduct as a Group III offense, the application of administrative leave prior to the his termination, and the extension of the his administrative leave beyond the timeframe described in DHRM Policy 1.60. The university argues that these matters are not “dismissals” and thus “cannot be directly qualified for a hearing without going through the normal management resolution steps.” The university further contends that its investigation and the grievant’s administrative leave occurred more than 30 calendar days before he filed his grievance, and thus they are untimely.²

The grievant’s termination, via the issuance of the Group III Written Notice, is the core management action at issue in this case.³ The “independent wrongful acts” and other issues described in the grievance relate to the facts underlying the alleged misconduct for which the grievant was terminated, as well as the university’s application of policy throughout the disciplinary process and its motivation for issuing the discipline. On one hand, some of these additional matters could have been grieved separately prior to the grievant’s termination—for example, the university’s investigation and the grievant’s administrative leave. However, requiring a grievant to individually challenge each step of the disciplinary process through a separate grievance in this way would serve no useful administrative purpose, but instead only generate confusion and delay in the ultimate resolution of matters such as the disciplinary action at issue here. The “independent wrongful acts” identified by the grievant were a part of the disciplinary process that resulted in the issuance of the Written Notice and his termination; they are inextricably connected to and inseparable from the discipline that the university concedes must proceed to a hearing.

As a result, we find that the allegations presented in the grievance, in their entirety, are best understood as a series of alternative theories and claims⁴ in support of the grievant’s overall challenge to the Group III Written Notice and his termination. As the grievant’s challenge to the Written Notice and termination is timely, so too are the series of alternative theories and claims raised. The grievant may present relevant evidence about any or all of these theories and claims at the hearing on this matter. The hearing officer will have the authority to order relief consistent with the grievance procedure for cases involving disciplinary actions and termination.⁵

² The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date they knew or should have known of the event or action that is the basis of the grievance. Va. Code § 2.2-3003(C); *Grievance Procedure Manual* §§ 2.2, 2.4.

³ EDR has previously ruled that a challenge to a Written Notice resulting in termination and a challenge to the termination itself are inseparable. EDR Ruling No. 2020-5013.

⁴ The “claims” or “issues” raised by a grievance are the management actions being challenged. *See, e.g.*, EDR Ruling Nos. 2013-3480, 2013-3495; EDR Ruling Nos. 2007-1561, 2007-1587.

⁵ Va. Code § 2.2-3005.1(A); *Rules for Conducting Grievance Hearings* §§ VI(B), (D), (E).

CONCLUSION

For the reasons set forth above, EDR concludes that the grievant's December 14, 2020 dismissal grievance shall proceed as described in this ruling. A hearing officer will be appointed in a forthcoming letter.

EDR's rulings on matters of compliance are final and nonappealable.⁶

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