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COMPLIANCE RULING

In the matter of the Department of Corrections
Ruling Number 2021-5207
February 23, 2021

The grievant has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) in relation to his January 6, 2021 grievance. The grievant alleges that the Department of Corrections (the “agency”) has failed to comply with the response requirements of the grievance procedure.

FACTS

On or about January 6, 2021, the grievant initiated an expedited grievance challenging a Group III Written Notice reportedly issued to him on December 9, 2020, with a demotion, transfer, and pay reduction. As part of his challenge, the grievant alleged that the Written Notice was not only unfounded but also issued in retaliation for complaints he had made against the assistant warden and other managers at his facility. The grievant noted that, only two days following his own most recent complaint against the assistant warden, a coworker filed a complaint against the grievant. The grievant argued that the complaint against him was suspicious and that the assistant warden should not have had any involvement in subsequent investigations and/or discipline against the grievant. Instead, he claimed, the assistant warden and others named in his earlier complaints served him his disciplinary due process notice, participated on the agency panel receiving the grievant’s response, and “sign[ed] off” on the Group III Written Notice ultimately issued to him. The grievant further alleges that the agency never substantively investigated his complaints about his facility managers, which included fraud, retaliation, misapplication of agency policies, and discrimination. As relief, the grievant sought reinstatement to his previous rank, restoration of his salary and benefits, rescission of the Group III Written Notice, and a thorough investigation of his earlier complaints.

It appears that the parties held a telephonic meeting on January 15, 2021, pursuant to the second management resolution step under the grievance procedure. The facility warden provided a written second-step response dated January 22, 2021. On February 8, 2021, the grievant sought a compliance ruling from EDR, on grounds that the agency’s second-step response had not adequately responded to the issues raised in the grievance.

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DISCUSSION

The *Grievance Procedure Manual* states that, at the second management resolution step, the parties should participate in a meeting to “include open discussion of the grievance issues to promote understanding of the other party’s position and possible resolution of the workplace issues.”¹ Following the meeting, “the second-step respondent must provide a written response . . . that must address the issues and the relief requested and should notify the employee of their procedural options.”² While the management respondent is not required to take up each and every point or factual assertion raised by the grievant, she must generally address each issue raised and the requested relief.³

In this case, the grievant has challenged the Group III Written Notice as well as the circumstances leading up to its issuance, including the investigation, his pre-disciplinary leave, and due process. The specific issues the grievant identified in his Grievance Form A were:

1. I did not commit the offenses set forth in the Written Notice.
2. The disciplinary action is based on false allegations.
3. The disciplinary action itself was retaliation.
4. The disciplinary action and the investigation violated the conflicts of interest policy as well as other [agency] policies and state laws.
5. The discipline was inappropriate under the circumstances, all mitigating factors were not considered, and the disciplinary action was inconsistent with similar cases.
6. I was denied due process procedures that were available to me.

Following the second-step meeting, the warden’s three-page response letter acknowledged each of these issues (combining the second and third items) and addressed them in turn. Regarding the first, second, and third issues, the warden responded that the charged offenses were based on an investigation by the agency’s employee relations manager, which included interviews with multiple employees. In light of the investigation’s findings sustaining the grievant’s policy violations, the warden found no basis to conclude the Written Notice was retaliatory or otherwise flawed in its procedure or substance. As to the fourth issue, the warden noted that none of subjects of the grievant’s past complaints “had any part in investigating nor determining the findings” of the investigation against the grievant, and she asserted that the facility’s previous warden had addressed the grievant’s prior complaint against the assistant warden.

Regarding the fifth issue, the warden denied that similar situations at the facility had resulted in more lenient discipline; she also asserted that the agency had mitigated discipline against the grievant by not terminating his employment, as would normally occur with the issuance of a Group III Written Notice. As to the sixth issue, the warden expressed that the grievant had five calendar days to respond to the charges against him, and she asserted that the grievant

¹ *Grievance Procedural Manual* § 3.2.

² *Id.*

³ *E.g.*, EDR Ruling No. 2018-4718; EDR Ruling No. 2016-4195.

was “notified of the investigation and allegations against [him] within the appropriate timeframe to prepare for [his] due process meeting.”

Having reviewed the second-step response in the context of the particular facts surrounding this case, EDR concludes that it is adequate for purposes of compliance with the grievance procedure. The response addresses each of the issues raised, even if the agency’s positions are broadly stated and do not expressly respond to every allegation and argument the grievant has set forth in support of his claims. Although the grievant disagrees with the warden’s “selective” discussion of the issues and also her presentation of the facts, as the second-step respondent she addressed whether the agency’s charges against the grievant appeared justified, whether they might be tainted by retaliatory motives or other procedural problems, and ultimately whether the agency’s disciplinary actions were warranted. While the grievant may understandably seek a more detailed or evaluative response to his claims, the grievant will have the opportunity to raise all of his points at a grievance hearing to be addressed *de novo* by an impartial hearing officer⁴ should he seek to advance his grievance.

CONCLUSION

Based on the foregoing, EDR finds that the agency has substantially complied with the requirements of the grievance procedure by adequately addressing the issues and relief requested and advising the grievant of his procedural options. To proceed with the grievance, the grievant must either advance the grievance or notify the agency’s human resources office in writing that he wishes to conclude his grievance **within five workdays of receipt of this ruling.**

EDR’s rulings on matters of compliance are final and nonappealable.⁵

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⁴ Because the grievance challenges formal discipline, the grievant will have the opportunity to present his claims at a hearing if he chooses to advance his grievance to that stage. *See Grievance Procedure Manual* § 4.1(a).

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