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COMPLIANCE RULING

In the matter of the Department of Corrections
Ruling Number 2021-5287
July 26, 2021

The Department of Corrections (the “agency”) has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management in relation to the grievant’s March 15, 2021 grievance.

FACTS

On March 15, 2021, the grievant filed a grievance alleging discriminatory and harassing conduct from a manager. On the same date, the grievant also filed a discrimination complaint, containing the same allegations as those described in the grievance, with his institution’s human resources office. Due to the nature of the issues raised within his grievance and the discrimination complaint, the matter was referred for an EEO investigation. The grievance was put on hold for the duration of the investigation. On or about April 16, 2021, the EEO investigation concluded with a finding that the grievant’s allegations were unsubstantiated. The agency later became aware that the grievant had died on June 28, 2021. At the time of the grievant’s death, the grievance had not advanced. The agency has requested this ruling to close the grievance.

DISCUSSION

The grievance procedure does not address the impact of a grievant’s death on their existing grievance. In previous cases where a grievant has died after filing a grievance challenging formal disciplinary action or termination, we have determined that the grievant’s estate or next of kin should be entitled to pursue any relief available (for example, back pay and benefits from the date of termination to the date of death) as a successor in interest.¹

¹ See, e.g., EDR Ruling No. 2021-5279; EDR Ruling No. 2009-2317. In cases at law, in the event of a party’s death, a successor in interest can be substituted for the party by motion. Sup. Ct. of Va. R. 3:17. The federal Merit Systems Protection Board also allows for the substitution of a successor in interest to an employee who dies after filing a matter with the Board, when the interests of the employee do not terminate upon his death. 5 C.F.R. § 1201.35. Such an approach appears just and appropriate in state grievance matters as well.

This case, however, does not involve management actions or omissions that would entitle the grievant to back pay, restoration of benefits, or similar monetary relief. It is unclear in a situation like this one whether a successor in interest should be entitled to pursue a grievance on behalf of a deceased grievant. However, we need not decide this issue with finality because, while this ruling was pending, the grievant's next of kin confirmed to the agency that they do not wish to proceed with the grievance. EDR therefore considers this grievance concluded.

EDR's rulings on matters of compliance are final and nonappealable.²

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² See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).