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COMPLIANCE RULING

In the matter of the Department of Juvenile Justice
Ruling Number 2022-5290
August 5, 2021

The Department of Juvenile Justice (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 April 16, 2021 grievance. The agency alleges that the grievant has failed to comply with the time limits set forth in the grievance procedure for advancing or concluding the grievance.

FACTS

On or about April 16, 2021, the grievant initiated a grievance with the agency. The agency states that the second step response was emailed to the grievant on June 8, 2021. The agency further states that it sent an additional copy of the second response to the grievant on June 18 and requested a response by June 21. Having apparently received no further response from the grievant, the agency then sent a notice of noncompliance to the grievant via email on or about June 30, 2021.¹ In its notice of noncompliance, the agency requested a response from the grievant within five workdays of receipt of the notice. As more than five workdays have elapsed since the agency notified the grievant of the alleged noncompliance and the grievant has not yet advanced or concluded the grievance, the agency seeks a compliance ruling allowing it to administratively close the grievance.

Meanwhile, the grievant began an approved absence from work on June 16, 2021 and filed a claim for short-term disability benefits under the Virginia Sickness and Disability Program (“VSDP”),² which has since been approved. The grievant returned to work on July 19, 2021. The grievant is adamant that she already returned the grievance to the agency indicating that she wishes to proceed to the third step. While the grievant does not recall the exact date that she allegedly

¹ For purposes of this ruling, EDR will assume the grievant received the agency’s emailed notice of noncompliance because there is nothing to indicate that it may have been sent to an incorrect email address or was otherwise improperly addressed. *Cf., e.g.,* Washington v. Anderson, 236 Va. 316, 322, 373 S.E.2d 712, 715 (1988) (holding that the mailing of correspondence, properly addressed and stamped, raises a presumption of receipt of the correspondence by the addressee).

² See Va. Code § 51.1-1100 *et seq.*; DHRM Policy 4.57, *Virginia Sickness and Disability Program*.

returned the grievance, she affirms that she returned it to human resources before she went out on leave.

DISCUSSION

The grievance process is intended to provide the parties with an expeditious way to resolve workplace issues.³ In furtherance of this goal, the five workday rule requires the parties to a grievance to take appropriate action, depending on the procedural stage of the grievance, within five workdays of receipt of the grievance.⁴ Thus, for example, a grievant must advance or conclude their grievance within five workdays of receiving each step response, and each step-respondent is required to issue their response within five workdays of receiving the grievance. The *Grievance Procedure Manual* defines “workdays” as the “[n]ormal work schedule (excluding authorized leave time) for the individual responsible for taking the required action.”⁵ Ordinarily, a grievant would not be required to proceed with a grievance while on an approved absence from work. However, there is nothing in the grievance procedure to prevent the parties from proceeding in such a case if the grievant wishes to do so.⁶

Participation in the grievance process is considered to be an approved work-related activity.⁷ The grievant was out of work on VSDP leave from June 16 through July 19, 2021, and was therefore unable to perform work-related activities during the time that the agency emailed her on June 18 to providing an extension to receive her response. On June 30, 2021, the agency notified the grievant that she was not in compliance with the grievance procedure and requested a response from her within five workdays. However, since the grievant was still on leave at the time of this notification, she was not required to respond to the second step response until she returned to work.

The grievance procedure requires both parties to address procedural noncompliance through a specific process.⁸ 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.⁹ 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

³ See *Grievance Procedure Manual* § 1.1.

⁴ See *id.* §§ 3.1, 3.2, 3.3.

⁵ *Id.* § 9.

⁶ See EDR Ruling No. 2014-3881.

⁷ See *Grievance Procedure Manual* §§ 8.6, 8.8.

⁸ *Grievance Procedure Manual* § 6.3.

⁹ See *id.*

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.¹⁰

When the agency submitted its compliance ruling request on July 19, 2021, the grievant was just returning from leave and, accordingly, five workdays had not elapsed following her receipt of the notice of noncompliance. As such, the agency's ruling request was premature. While this ruling was pending, more than five workdays has passed without the grievant submitting the grievance form with the appropriate box checked indicating that she wishes to proceed with the grievance or conclude it. This is likely because the grievant believes that she has already done so. However, the agency is unable to find a record of the grievant having submitted the paperwork. Communications from the grievant while this ruling is pending make it apparent that the grievant wishes to proceed with the grievance.

Based on the foregoing EDR is unable to determine that the grievant has failed to comply with the grievance procedure at this time. As the parties appear to be at a stalemate as to the next steps, and in the interest of expeditiously resolving the situation, EDR directs the parties to proceed as follows. The agency must provide the grievant with another copy of the Grievance Form A at issue in this case, even though it already did before. Upon receipt, the grievant will have **five workdays** to notify human resources of her intention to proceed with the grievance or conclude the grievance by checking the appropriate box on the form and returning it to human resources. If the grievant does not do so within five workdays, the agency may provide a notice of noncompliance and proceed through the party noncompliance steps listed in Section 6.3 of the *Grievance Procedure Manual*.

EDR's rulings on matters of compliance are final and nonappealable.¹¹

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¹⁰ 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.

¹¹ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).