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COMPLIANCE RULING

In the matter of the Department of Corrections
Ruling Number 2022-5297
August 5, 2021

The Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management has opened this ruling concerning the grievant’s submission of three grievances, all of which appear to challenge her July 16, 2021 termination from the Department of Corrections (the “agency”). EDR has opened this compliance ruling to address procedural issues regarding how the three grievances should proceed.

FACTS

The agency issued to the grievant two Group II Written Notices on July 16, 2021. The agency also terminated the grievant’s employment as of July 16 due to her accumulation of disciplinary actions.¹ The first Written Notice lists offense dates of May 14 and May 22, while the second Written Notice lists an offense date of June 25.

On or about July 26, 2021, the grievant mailed three grievances to EDR.² The first grievance, filed on a regular Grievance Form A, identifies the date the grievance occurred as May 14 and May 22, 2021, describes the issues as “[m]y due process was not investigated thoroughly and extenuating circumstances weren’t considered,” and requests “[a] fair process” as relief. The second grievance, filed on a Grievance Form A – Expedited Grievance, identifies the date the grievance occurred as June 25, 2021, describes the issues as “[n]o investigation, not a fair process (bias)” and requests “[a] fair due process without bias” as relief. The third grievance, filed on a Grievance Form A – Dismissal Grievance, lists a dismissal date of July 16, 2021, describes the issues as “[w]rongful termination [and] bias,” and seeks “[f]air due process” as relief.

¹ See DHRM Policy 1.60, *Standards of Conduct*, at 9 (stating that the issuance of “[a] second active Group II Notice normally should result in termination”).

² The three grievance forms are all dated July 23, 2021. The grievant sent her grievances to EDR by certified mail; the tracking information for the certified mailing indicates that it was postmarked on July 26. Pursuant to Section 2.2 of *Grievance Procedure Manual*, the “postmark date is considered the initiation date” for grievances that are submitted by mail. Accordingly, EDR will consider July 26 as the date of initiation for the three grievances.

DISCUSSION

Section 2.4 of the *Grievance Procedure Manual* states that a grievance may not “challeng[e] the same management action or omission challenged by another grievance.” In this case, it appears that the three grievances all challenge the same management actions: the grievant’s receipt of two Group II Written Notices, accompanied by termination, on July 16, 2021. The first grievance appears to challenge issues relating to the pre-disciplinary due process preceding the issuance of the Written Notice for offenses that allegedly occurred on May 14 and May 22. The second grievance appears to challenge issues relating to the agency’s investigation preceding the issuance of the Written Notice for an offense that allegedly occurred on June 25. The third grievance challenges the grievant’s alleged “wrongful termination” via the issuance of the two Written Notices on July 16. The three grievance submissions include identical attachments describing the grievant’s disagreement with the disciplinary actions. In addition, much of the documentation the grievant submitted with the grievances (*e.g.*, copies of the Written Notices and due process notices) is identical.

As a result, we find that the grievances are duplicative of one another, and thus there is no basis for all three grievances to proceed independently or separately. These three grievances all essentially articulate alternative theories as to why the grievant believes her termination and the Written Notices themselves were improper.³ As a result, EDR will consider all three grievances as one case to proceed to hearing as a dismissal grievance challenging the grievant’s July 16, 2021 termination.⁴

The agency has already submitted a completed Form B for the grievant’s qualified challenge to the two Written Notices and her termination. A hearing officer will be appointed in a forthcoming letter.

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

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³ The agency has not objected to any noncompliance on the part of the grievant in submitting three separate grievances.

⁴ See *Grievance Procedure Manual* § 2.5, (stating that grievances challenging “terminations due to formal discipline or unsatisfactory job performance . . . shall proceed directly to a formal hearing”).

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