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COMPLIANCE RULING

In the matter of the Department of Behavioral Health and Developmental Services
Ruling Number 2024-5686
April 4, 2024

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Virginia Department of Human Resource Management (“DHRM”) seeking to reopen her October 27, 2023 grievance with the Department of Behavioral Health and Developmental Services (the “agency”). That grievance addressed the grievant’s contention that she was being improperly compensated and that her salary was impacted by alleged discrimination. The grievance proceeded through the resolution steps of the grievance process, with the agency head declining to qualify the grievance for a hearing. The grievant appealed that determination to EDR. During the pendency of that appeal, the agency conducted a review of the grievant’s salary and offered the grievant a salary increase. The grievant accepted the salary increase and elected to conclude her grievance. The grievant seeks to reopen the grievance “because of the disorganized way that my grievance was handled by DBHDS.”

The *Grievance Procedure Manual* does not explicitly address the reopening of a dismissed or concluded grievance. As EDR has final authority on matters of compliance with the grievance procedure,¹ which includes whether a grievance proceeds or not,² EDR’s authority extends to entertaining requests from parties to reopen a closed grievance.³ Generally speaking, therefore, EDR will only grant a timely⁴ request to reopen a closed grievance for just cause.⁵

The disorganization the grievant contends provides her with a basis to reopen her grievance surrounds the grievance paperwork the agency had the grievant sign to conclude her grievance and further documentation after the fact. Following meetings with the grievant to offer her an increase in her salary, on February 20, 2024, the agency had the grievant sign a version of her grievance form that omitted at least one stage of the grievance process that had already occurred. While this

¹ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).

² See, e.g., *Grievance Procedure Manual* §§ 2.3, 2.4, 6.1, 6.3.

³ EDR Ruling No. 2024-5680.

⁴ The facts surrounding the grievant’s ruling request do not present a basis for EDR to find the request untimely.

⁵ See, e.g., EDR Ruling No. 2024-5643 at 2 (utilizing language included routinely in EDR rulings permitting the closure of a grievance for non-compliance indicating that the grievance can be “reopened only upon a timely showing by the grievant of just cause”).

version of the form appears to have raised concerns in the grievant's mind after the fact, we cannot find that the use of this version of the form invalidated the conclusion of the grievance. Although electing to conclude a grievance on the grievance form is typically the clearest way to convey that intent, EDR does not require such an election to be on the form, especially where doing so would require amendments to fields on the form that had already been completed. For example, had the grievant simply sent an email to the agency indicating her intent to conclude the grievance, that would have been sufficient to indicate that the grievance could be considered closed. That the agency used an earlier version of the grievant's grievance form to record her conclusion of the grievance does not undo the fact that the later step (the agency head's denial of qualification) had occurred and remains part of the grievance record. While this documentation appears to have injected some confusion into the matter, there is no indication, and the grievant has not suggested, that she was induced or forced into concluding her grievance.⁶ Accordingly, we do not find that this is sufficient cause to suggest a basis to reopen the grievance.⁷

EDR's rulings on compliance are final and nonappealable.⁸

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⁶ The grievant also indicates that when she raised her questions about the documentation after the fact, the agency presented her with a March 13, 2024 memo explaining the circumstances of the matter. The agency apparently sought to have the grievant sign another version of the grievance form again, which the grievant appears to have declined to do. Although it was not necessary to have the grievant sign the form again, these events after the conclusion of the grievance do not present a basis to suggest that the grievant's choice to end her grievance on February 20, 2024, was not her intent at the time or that her decision was procured by any improper action by the agency that would support reopening the grievance.

⁷ To the extent the grievant may wish to assert that her current salary continues to be based on unlawful discrimination or otherwise improper, the conclusion of her grievance does not prevent her from raising such claims in another appropriate forum. Furthermore, to the extent future agency actions present a basis to suggest that her current salary continues to be out of alignment or inconsistent with policy, for example, the grievant could seek to file a new grievance based on such future actions.

⁸ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).