



JANET L. LAWSON
DIRECTOR

COMMONWEALTH OF VIRGINIA
Department Of Human Resource Management
Office of Employment Dispute Resolution

James Monroe Building
101 N. 14th Street, 12th Floor
Richmond, Virginia 23219
Tel: (804) 225-2131
(TTY) 711

COMPLIANCE RULING

In the matter of the Virginia Information Technologies Agency
Ruling Number 2024-5708
May 24, 2024

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) on whether the grievant’s April 29, 2024 grievance complies with the grievance procedure.

FACTS

On or about April 29, 2024, the grievant initiated a grievance with the agency at which he is employed, the Virginia Information Technologies Agency (the “agency”). The subject of the grievance concerns a request (the “request”) submitted to the agency by an executive at a different agency in which the executive “levied accusations of mismanagement of funds, unnecessary project delays, and unethical behavior” purportedly with regard to the grievant’s conduct. The grievant seeks a “fair and impartial process to examine the accusations leveled against me.” At the conclusion of the grievance, the grievant “anticipate[s] a written acknowledgment from my accuser, should the grievance be ruled in my favor, stating that the accusations are not only baseless but also unjustified.”

Shortly after receipt of the request, agency leadership contacted the grievant and has informed him that “[y]ou are doing your job exactly as you are supposed to. Please don’t worry about this one. Keep doing what you have been doing.” In addition, agency leadership reached out to the other agency to confirm that the grievant is doing his job appropriately and proper contracting processes are being followed. Upon receiving the grievance, the agency has confirmed these responses with the grievant, noting that there has been no corrective or management action initiated against the grievant as a result of the agency’s receipt of the request. Accordingly, the agency administratively closed the grievance because there are no management actions or omissions being challenged and the grievance contests the conduct of an employee at a different agency. The grievant has requested this ruling to appeal the agency’s determination, seeking a process to resolve a dispute with an employee at a different agency.

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DISCUSSION

In general, “any management actions or omissions may be grieved” by an employee, so long as the grievance complies with the initiation requirements of the grievance procedure.¹ However, as asserted by the agency, this grievance does not identify any management actions or omissions by his employing agency that give rise to the grievance. Instead, the grievant seeks to address the conduct of a manager at a different agency. The grievance procedure is generally a process to address an employee’s concerns with actions or omissions by the agency at which they are or were employed. This premise resides in the requirement of the grievance procedure that a grievance “[a]rise[] in the agency in which the employee works.”² In this case, the agency has no control over the other agency’s employee and, consequently, EDR perceives no meaningful relief that the agency (or a hearing officer) could grant in this case.

In his ruling request, the grievant has also cited to the Commonwealth’s *Civility in the Workplace* policy. DHRM Policy 2.35 and its associated guidance make clear that agencies must not tolerate workplace conduct that is disrespectful, demeaning, disparaging, denigrating, humiliating, dishonest, insensitive, rude, unprofessional, or unwelcome. Thus, while these terms must be read together with agencies’ broader authority to manage the means, methods, and personnel by which agency work is performed, management’s discretion is not without limit. Policy 2.35 also places affirmative obligations on agency management to respond to credible complaints of prohibited conduct and take steps to ensure that such conduct does not continue.³ Accordingly, where an employee reports that work interactions have taken on a harassing or bullying tone, Policy 2.35 requires agencies to determine in the first instance whether such perceptions are reasonably supported by the facts. Where an agency fails to meet these obligations, such failure may constitute a misapplication or unfair application of Policy 2.35 such that the harassing or bullying behavior is imputable to the agency.

To the extent the grievant argues that the request violated the *Civility in the Workplace* policy, EDR does not perceive that his own agency has failed to appropriately address the matter. Agency management quickly sought to respond to the request and supported the grievant’s work performance. Although the agency’s response to the request is a management action or omission that could be grieved, EDR cannot identify any further action available to the grievant’s own agency to address the conduct of an employee at another agency under these facts.⁴ Furthermore, we do not perceive that the grievant has been placed in a work environment that violates the policy such that his agency has failed to respond appropriately.⁵

¹ *Grievance Procedure Manual* § 2.4.

² *Id.*

³ Under Policy 2.35, “[a]gency managers and supervisors are required to: Stop any prohibited conduct of which they are aware, whether or not a complaint has been made; Express strong disapproval of all forms of prohibited conduct; Intervene when they observe any acts that may be considered prohibited conduct; Take immediate action to prevent retaliation towards the reporting party or any participant in an investigation; [and t]ake immediate action to eliminate any hostile work environment when there has been a complaint of workplace harassment”

⁴ As a general matter, EDR disfavors allowing grievances to proceed that would not be able to meaningfully address the subject matter grieved or provide effectual relief in part on the theory that a grievance may not be “used to . . . impede the efficient operations of government.” Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4(4).

⁵ If additional conduct were to occur or worsen, then further steps by the agency could be necessary. The grievance procedure may be an available means to address an agency’s failure to act in such a circumstance.

Having carefully considered the parties' arguments, EDR finds that the issues raised in the grievance do not challenge management actions or omissions that are the proper subjects of a grievance, or otherwise are not susceptible to relief through the grievance procedure, and thus there is no basis for the grievance to proceed.⁶ Accordingly, and for the reasons discussed above, EDR finds that the grievant's April 29, 2024 grievance will remain administratively closed and will not proceed further. EDR's rulings on matters of compliance are final and nonappealable.⁷

Christopher M. Graf
Director
Office of Employment Dispute Resolution

⁶ EDR's determinations in this ruling only address the grievant's claims and relief available under the grievance procedure. This ruling does not address whether the grievant may have other remedies available through another process or claim. To the extent the grievant may have other legal or equitable remedies available, they could be sought in another forum.

⁷ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).