



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 Department of Behavioral Health and Developmental Services
Ruling Number 2025-5746
August 29, 2024

The grievant seeks a compliance ruling from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) on whether her July 15, 2024 grievance with the Department of Behavioral Health and Developmental Services (the “agency”) is in compliance with the grievance procedure. The agency has asserted that the grievance challenges issues that are not timely under the grievance procedure. For the reasons set forth below, EDR determines that the grievance is timely and shall be permitted to proceed.

FACTS

On or about June 7, 2024, the grievant received a memorandum from her facility’s human resources director stating that, following a classification and compensation review by the agency, the grievant’s Role had been reclassified from Therapist II (Pay Band 4) to Therapist I (Pay Band 3). The memorandum also noted: “The final results of the study will be communicated to each staff in the upcoming weeks.” On the next business day, the grievant reached out to two members of her facility’s employee relations staff to inquire about the change, which she described as “basically a demotion.” Further noting that the new role did not appear to be consistent with her current supervisory duties, she requested clarification on her workload going forward. Over the next week, the grievant also inquired about the situation with the agency’s central administration; she claims she received no response.

On June 14, 2024, the grievant’s department director notified her that he was pursuing revised Employee Work Profiles (EWPs) for her and other affected staff to include language to support their continued classification as Therapist II. On June 21, the department director contacted multiple employee relations staff, both at the grievant’s facility and at central office, to inquire further about the demotion of his staff members. He advised that he was seeking to revise their EWPs but “there has been no response or indication that any other consideration or EWP review would be considered.” On June 24, he informed the grievant and other department staff that, if he did not receive additional guidance, “we will have to change your EWPs to reflect the working role of a Therapist I” while reassigning the grievant’s supervisory responsibilities to other employees. On June 25, the department director also sent a detailed message to agency human resources staff offering justifications for the grievant and other staff to retain their prior Roles and

An Equal Opportunity Employer

associated Pay Bands. This message prompted a response from the agency's central administration conceding that the reclassification "did not account for the supervision," and staff was apparently "evaluating how to account or and rectify this."

On July 10, 2024, the department director received multiple responses to his previous inquiries about the grievant's and other employees' reclassifications, which he shared with the grievant and other staff. One such response was from their facility's recruitment manager, who affirmed human resources' position that, under DHRM's classification structure, the grievant did "not qualify for the Therapist II role" because she did not supervise Therapist I employees, although she supervised other employees. However, the recruitment manager advised that "the central office will conduct a thorough review of the organizational chart to ensure all staff are classified in accordance with the DHRM classification. . . . The timeline for this review is not communicated as they will conduct a system-wide exercise." Another response on the same date from the regional human resources director confirmed that the managers involved "need to allow [central office] to perform their system-wide review and go from there."

On July 11, 2024, the grievant again reached out to agency management requesting a meeting to discuss her concern that her supervision duties did not align with her new Role of Therapist I.

The grievant filed a grievance on or about July 15, 2024, challenging the reclassification of her position. She asserted that, as of that date, "my duties are still the same as when I was a [Therapist II] despite the change in the realignment process My compensation and role do not align with my assigned duties and EWP." As relief, the grievant requested "to be in the correct role, a therapist 2/pay band 4, to be correctly aligned with my assigned duties and EWP and to be compensated for the work I continue to do."

On or about July 16, 2024, the grievant received a second memorandum from her regional human resources director stating that the agency had "made a targeted effort to reevaluate Therapist Is who provide supervision to staff but do not meet the criterion of Therapist II" The memorandum confirmed that the grievant would still be classified in the Role of Therapist I. On July 25, 2024, in direct correspondence with the grievant, the recruitment manager further confirmed that the grievant's Role change was the result of realignment instructions from the agency's central office administration.

On or about July 26, 2024, the agency informed the grievant that her grievance would be administratively closed for untimeliness, as she had "received her realignment letter" on June 10, 2024, but not filed her grievance until July 15, 2024. The grievant now seeks a ruling on whether the agency's administrative closure of her grievance complies with the grievance procedure.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date he or she knew or should have known of the event or action that is the

basis of the grievance.¹ When an employee initiates a grievance beyond the 30-calendar-day period without just cause, the grievance is not in compliance with the grievance procedure and may be administratively closed. However, EDR has consistently held that a claim of workplace conduct that is ongoing is raised timely if some agency action alleged to be part of the ongoing conduct occurred within the 30 calendar days preceding the initiation of the grievance.²

In this case, although the record reflects that the grievant knew as early as June 7, 2024, that significant changes were being made to her position, the available information suggests that the changes, as communicated to the grievant in the weeks following June 7, remained a matter of active discussion between herself, her department director, regional human resources staff, and potentially also the agency's central office through at least late July, if not later. Although the agency communicated a new Role and salary with an effective date of May 25, 2024, it appears that substantial uncertainty around the grievant's duties persisted through the date she filed her grievance – and continues to persist as of the date of this ruling. Management communications during the 30 days prior to the grievance indicated that the duties to be reflected in any forthcoming EWP were far from settled, and it does not appear that a new EWP has yet been completed. In addition, the grievant alleges that her supervisory duties were to be removed consistent with her Role change, but to date that has not occurred. Communications from human resources staff also suggest that further changes may be considered pending further action by the agency's central office. Therefore, it would appear that the changes to the grievant's position – particularly her job duties – are not necessarily finalized. Accordingly, EDR concludes that the changes that are the subject of the grievance are more accurately viewed as ongoing in nature. In the meantime, the grievant alleges that she has been classified as a Therapist I while continuing to be responsible for the duties of a Therapist II. Based on the information available, we cannot say that a grievance challenging this situation was untimely as of July 15.

For these reasons, EDR finds that the grievance is not out of compliance with sections 2.2 and 2.4 of the *Grievance Procedure Manual*. Accordingly, the grievance must be permitted to proceed in full. Within five workdays of this ruling, the first management resolution step respondent must provide a written response on the Grievance Form A, unless the parties mutually agree to modify this procedure.³

EDR's rulings on matters of compliance are final and nonappealable.⁴

Christopher M. Grab
Director
Office of Employment Dispute Resolution

¹ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.2.

² See Nat'l R.R. Pass. Corp. v. Morgan, 536 U.S. 101, 115-18 (2002) (holding the same in a Title VII hostile work environment harassment case); see also *Guessous v. Fairview Prop. Invs., LLC*, 828 F.3d 208, 221-24 (4th Cir. 2016).

³ See *Grievance Procedure Manual* § 8.4.

⁴ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).