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COMPLIANCE RULING

In the matter of Department of Corrections
Ruling Number 2025-5765
November 12, 2024

The Department of Corrections (the “agency”) has requested a compliance ruling from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) in relation to the grievant’s September 11, 2023 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 his grievance.

FACTS

On or about September 11, 2023, the grievant initiated a grievance with the agency. On October 23, 2023, the agency’s second-step respondent provided a written response.¹ According to the agency, its staff transmitted the response by email on November 2, 2023 with instructions for advancing or concluding the grievance. It appears that neither party subsequently took any action until approximately nine months later, when agency staff discovered the outstanding grievance.² The agency states that it notified the grievant by letter of October 10, 2024 that he was out of compliance with the time requirements of the grievance procedure and that he should correct the noncompliance by submitting his election to advance or conclude the grievance within five workdays. EDR also contacted the grievant by email on the same date requesting his intentions with respect to advancing the grievance. On November 7, 2024, having received no further response from the grievant, the agency requested that EDR issue a compliance ruling allowing the agency to administratively close the grievance.

¹ The response refers to the most recent respondent alternately as the second- and third-step respondent. The agency has indicated that some confusion resulted from the grievant’s filing of an expedited grievance (beginning with the second-step respondent) and the agency’s processing of it as a standard grievance (beginning with the first step). However, it is not apparent that any such confusion would have affected the compliance question at issue in this ruling, as the grievant would have been required to provide his response within five workdays in any case.

² According to the agency, this grievance was discovered following the grievant’s termination from employment on July 10, 2024. The grievant challenged his termination by separate grievance, which was heard by an administrative hearing officer on October 1, 2024, as EDR Case Number 12161, and is now pending for a decision.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.³ That process assures that the parties first communicate with each other about the noncompliance and resolve any compliance problems voluntarily, without EDR's involvement. Specifically, the party claiming noncompliance must notify the other party of any noncompliance in writing and allow five workdays for the opposing party to correct it.⁴ 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, which 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 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.⁵

In this case, the available facts show that, contrary to the grievance procedure's requirements, the grievant has not advanced or concluded his grievance within five workdays of receiving the agency's most recent management step response.⁶ The grievant also did not provide a response to EDR's direct inquiry regarding his intention to advance or conclude the grievance.

Therefore, because the grievant has apparently neither advanced nor concluded his grievance at this time, he has failed to comply with the grievance procedure. EDR therefore orders the grievant to correct his noncompliance **within 10 workdays of the date of this ruling** by notifying his human resources office in writing that he wishes to advance or conclude his grievance. If he does not do so, the agency may administratively close the grievance without any further action on its part. The grievance may be reopened only upon a timely showing by the grievant of just cause for the delay (for example, a serious illness, or other circumstances beyond the grievant's control).

EDR's rulings on matters of compliance are final and nonappealable.⁷

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³ *Grievance Procedure Manual* § 6.3.

⁴ *See id.*

⁵ While in cases of substantial noncompliance with procedural rules the grievance statutes grant EDR the authority to render a decision on a qualifiable issue against a noncompliant party, 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 to be 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.

⁶ *See Grievance Procedure Manual* § 3.3.

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