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COMPLIANCE RULING

In the matter of the Department of Social Services
Ruling Number 2025-5801
December 19, 2024

The Department of Social Services (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 July 30, 2024 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 her grievance.

FACTS

On or about July 30, 2024, the grievant initiated a grievance with the agency. The agency’s second step response was sent to the grievant on or about August 16, 2024. According to the second-step respondent, the grievant emailed on August 26 notifying the agency of her intent to continue the grievance to the third step. However, according to the agency, the grievant never filled out the applicable section of Grievance Form A to formally indicate her intent to appeal to the third step. In addition, the grievant’s employment with the agency was terminated on August 26, 2024 due to an accumulation of disciplinary actions. The agency states that the grievant did not challenge the termination through the grievance procedure. On November 1, the agency states that Employee Relations reached out to the grievant by phone to inquire whether she wanted to continue to the next step, and the grievant affirmed that she wanted to continue but apparently had to end the call before further details could be discussed. Having received no further contact from the grievant, the agency then sent a notice of noncompliance to the grievant via certified mail on or about November 14. As of December 4, the agency had not received the completed Grievance Form A from the grievant, nor have they been able to contact the grievant by mail or email. For that reason, the agency seeks a compliance ruling allowing it to administratively close the grievance.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.¹ That process assures that the parties first communicate with each other about the noncompliance and resolve any compliance problems voluntarily, without EDR’s

¹ *Grievance Procedure Manual* § 6.3.

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.² 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.³

In this case, the available facts show that, contrary to the grievance procedure's requirements, the grievant has not advanced or concluded her grievance within five workdays of receiving the agency's most recent management step response.⁴ While the grievant apparently notified the second-step respondent via email of her intent to appeal to the third step, it appears that the grievant did not fill out and return the applicable section of Grievance Form A to indicate her intent to continue the grievance, as is required by the *Grievance Procedure Manual*.⁵ The agency also received verbal confirmation on November 1 that the grievant wished to continue the grievance but apparently was not able to effectively communicate the requirement of filling out her choice on and returning the Grievance Form A. It appears that the agency has not been able to get in direct contact with the grievant since the November 1 phone call, as the grievant never responded to the noncompliance letter that was sent by the agency.

It is clear that at least at some point, the grievant intended to continue the grievance to the third step. However, simply notifying the agency of this intent without properly filling out the applicable section of Grievance Form A does not meet the grievance procedure requirements to continue the grievance, and the agency has made multiple attempts to relay this understanding to the grievant, to no avail. Therefore, because the grievant has apparently neither advanced nor concluded her grievance at this time by properly filling out Grievance Form A, she has failed to comply with the grievance procedure. EDR therefore orders the grievant to correct her noncompliance **within 10 workdays of the date of this ruling** by notifying her human resources office in writing that she wishes to advance or conclude the grievance. If she 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.⁶

² See *id.*

³ 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.

⁴ See *Grievance Procedure Manual* § 3.2.

⁵ See *id.* § 3.2.

⁶ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).

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