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COMPLIANCE RULING

In the matter of the Virginia Department of Transportation
Ruling Number 2025-5802
December 30, 2024

The Virginia Department of Transportation (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 25, 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 25, 2024, the grievant initiated a grievance with the agency. The agency’s second step response was sent to the grievant on or about September 3, 2024. Having received no further response from the grievant, the agency then emailed the grievant notifying her of noncompliance on September 19. In its email, the agency requested a response from the grievant within five calendar days of receipt of the email. On October 2, the agency again reached out to the grievant to notify her of her noncompliance with the grievance procedure, stating that the agency would be requesting a compliance ruling from EDR asking that the grievance be administratively closed for failure to respond. Having apparently not received the required response by the grievant, the agency requested a compliance ruling allowing it to administratively close the grievance. Since the request for this ruling, EDR has been able to get in contact with the grievant, who has confirmed that she wishes to conclude her 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 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

¹ *Grievance Procedure Manual* § 6.3.

² *See id.*

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 Further, the grievant has confirmed with EDR that she wishes to conclude her grievance. For that reason, EDR considers the grievance concluded and the agency's grievance file should be updated accordingly.

EDR's rulings on matters of compliance are final and nonappealable.⁵

Christopher M. Grab
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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 Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).