

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: June 5, 2017;
Ruling No. 2017-4555; Agency: Department of Corrections; Outcome: Grievant Not
in Compliance.



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

COMPLIANCE RULING

In the matter of the Department of Corrections
Ruling Number 2017-4555
June 5, 2017

The Department of Corrections (the agency) has requested a compliance ruling related to the grievant's October 7, 2016 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 October 7, 2016, the grievant initiated a grievance with the agency. On or about November 18, 2016, the agency states that it issued the grievant its third step response to the grievance. On January 20, 2017, the agency mailed a letter of noncompliance to the grievant, indicating that the agency had not received a response from him and would request closure of the grievance if he did not respond within five workdays of receipt of the letter. On February 22, 2017, not having had a response from the grievant, the agency sent a second letter of noncompliance to the grievant, via certified mail, again requesting a response from him.¹ Finally, on May 19, 2017, the agency requested a compliance ruling from EDR regarding the October 7, 2016 grievance.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.² 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 in writing and allow five workdays for the opposing party to correct any noncompliance.³ 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, who 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 an EDR ruling finds that either party to a grievance is in noncompliance, the ruling will (i) order the noncomplying party to correct its

¹ It does not appear that the grievant claimed the certified mailing. However, the agency states that it later sent the letter by regular mail.

² *Grievance Procedure Manual* § 6.3.

³ *See id.*

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.⁴

In this case, the grievant appears to have failed to advance or conclude his grievance within five workdays of receiving the agency's third resolution step response, as required by the grievance procedure.⁵ Moreover, the agency notified the grievant of his noncompliance, but the grievant has not advanced or concluded his grievance. EDR also attempted to contact the grievant in order to determine his intentions, but received no response.

As the grievant has apparently failed to advance or conclude his grievance in a timely manner, he has failed to comply with the grievance procedure. The Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management therefore orders the grievant to correct his noncompliance **within ten work days of the date of this ruling** by notifying his human resources office in writing that he wishes either to conclude the October 7, 2016 grievance or request qualification for hearing. If he does not, 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



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⁴ 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 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.

⁵ See *Grievance Procedure Manual* § 3.3.

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