

Issue: Compliance – Grievance Procedure (5 Day Rule); Ruling Date: June 20, 2017;
Ruling No. 2017-4568; Agency: Department of Motor Vehicles; 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 Motor Vehicles
Ruling Number 2017-4568
June 20, 2017

The Department of Motor Vehicles (the agency) has requested a compliance ruling related to the grievant's March 29, 2017 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 March 29, 2017, the grievant initiated a grievance with the agency. After proceeding through the management resolution steps, on or about May 11, 2017, the agency head determined that the grievance did not qualify for a hearing. On May 23, 2017, the agency sent letter of noncompliance to the grievant via electronic mail, indicating that the agency had not received a response from him and requesting a response within five business days of his receipt of the noncompliance letter. On June 12, 2017, the agency requested a ruling from EDR regarding the grievant's alleged non-compliance.

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 in writing and allow five workdays for the opposing party to correct any noncompliance.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, 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 noncompliance within a specified time period, and (ii) provide that if the noncompliance is not

¹ *Grievance Procedure Manual* § 6.3.

² *See id.*

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 grievant appears to have failed to advance or conclude his grievance within five workdays of receiving the agency's qualification decision, as required by the grievance procedure.⁴ Moreover, the agency notified the grievant of his noncompliance, but the grievant has not advanced or concluded his grievance.

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. Pursuant to the *Grievance Procedure Manual*, the agency may now administratively close the grievance without any further action on its part.⁵ 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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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 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* §§ 4.2, 4.3.

⁵ *Grievance Procedure Manual* § 4.3.

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