

Issue: Compliance – Grievance Procedure (documents and second step meeting);
Ruling Date: January 26, 2017; Ruling No. 2017-4468; Agency: Department of
Game and Inland Fisheries; Outcome: Agency Not in Compliance.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Employment Dispute Resolution¹

COMPLIANCE RULING

In the matter of the Department of Game and Inland Fisheries
Ruling Number 2017-4468
January 26, 2017

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) in relation to alleged noncompliance with the grievance procedure by the Department of Game and Inland Fisheries (the “agency”).

FACTS

On or about September 26, 2016, the grievant initiated a grievance challenging a selection process. The grievance advanced to the second resolution step on or about October 12, 2016. On November 3, 2016, the grievant agreed to an extension until December 7, 2016, for the agency to provide both the second step response as well as its response to a document request by the grievant. After the agency failed to meet the December 7 date, on December 9, 2016, the grievant gave written notice of noncompliance to the agency head. Having received no response from the agency, the grievant requested a compliance ruling from EDR on December 22, 2016.

On December 30, 2016, the agency advised EDR that it had provided the grievant with the requested information. Although apparently emailed by the agency to the grievant’s counsel, the information provided by the agency was not received. At EDR’s request, the agency then mailed the materials by mail to the grievant’s counsel. The grievant has now advised EDR that, after reviewing the documents from the agency, the agency has not yet provided the second step response. The grievant’s counsel, therefore, asks that EDR issue a compliance ruling granting substantive relief.

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

¹ Effective January 1, 2017, the Office of Employment Dispute Resolution merged with another office area within the Department of Human Resource Management, the Office of Equal Employment Services. Because full updates have not yet been made to the *Grievance Procedure Manual*, this office will be referred to as “EDR” in this ruling to alleviate any confusion. EDR’s role with regard to the grievance procedure remains the same post-merger.

² *Grievance Procedure Manual* § 6.3.

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 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.

In this case, the grievant seeks a compliance ruling on the agency's failure to timely provide its second step response and its response to a document request. As the requested documents have now apparently been provided to the grievant, EDR deems this issue to be moot. However, there appears to be no dispute that the agency has failed to provide the grievant with a second step response, as mandated by Section 3.2 of the *Grievance Procedure Manual*. The agency is therefore directed to provide its second step response to the grievant **within five workdays of this ruling**.

The grievant asks that EDR grant substantive relief in his favor due to the agency's repeated failure to comply with its obligations under the grievance procedure. 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. Although the repeated failure by the agency to provide the second step response and the requested documents is troubling, the noncompliance in this case does not demonstrate bad faith or gross disregard of the grievance procedure. The agency is cautioned, however, that repeated or flagrant noncompliance may result in EDR awarding substantive relief to a grievant.

EDR's rulings on matters of compliance are final and nonappealable.⁴



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³ See *id.*

⁴ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).