

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: March 31, 2017; Ruling No. 2017-4530; Agency: Department of Juvenile Justice; 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 Juvenile Justice
Ruling Number 2017-4530
March 31, 2017

The Department of Juvenile Justice (the “agency”) has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management in relation to the grievant’s September 14, 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 her grievance.

FACTS

On or about September 14, 2016, the grievant initiated a grievance with the agency. After the grievance proceeded through the management resolution steps, the agency head declined to qualify the grievance for a hearing on or about January 27, 2017. Having received no further response from the grievant, the agency mailed a notice of noncompliance on or about February 23. In its notice of noncompliance, the agency requested a response from the grievant within five workdays of receipt of the notice. Since more than five workdays have elapsed since the grievant received notice of the alleged noncompliance and has not yet advanced or concluded the grievance, 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 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

¹ *Grievance Procedure Manual* § 6.3.

² *See id.*

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.³

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

As the grievant has apparently failed to advance or conclude the grievance in a timely manner, the grievant has failed to comply with the grievance procedure. We therefore order the grievant to correct the noncompliance **within ten workdays of the date of this ruling** by notifying the agency's human resources office in writing to either conclude the grievance or appeal the agency head's qualification decision to EDR. If the grievant does not, the agency may 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* § 4.3.

⁵ In this case, the agency also had the option of administratively closing the grievance pursuant to Section 4.3 of the *Grievance Procedure Manual*, which provides the following: "If the employee does not submit his/her Grievance Form A to the agency within 5 workdays of receiving the agency head's qualification decision denying a hearing, the agency should provide the employee with a notice of noncompliance. See § 6.3, "Party Noncompliance." If the employee does not submit the Grievance Form A to appeal the agency head's denial of qualification or conclude the grievance within 5 workdays of receiving the notice of noncompliance, the agency may consider the grievance as concluded. If the employee later seeks to appeal the agency head's denial of qualification, EDR will consider whether just cause exists to consider the employee's request for a qualification ruling."

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