

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: September 28, 2016; Ruling No. 2017-4422; Agency: Department of Alcoholic Beverage Control; 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 Alcoholic Beverage Control
Ruling Number 2017-4422
September 28, 2016

The Department of Alcoholic Beverage Control (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 April 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 April 14, 2016, the grievant initiated a grievance with the agency. The agency states that its third step response was sent to the grievant by certified mail on or about July 14, 2016. According to the agency, this document was returned to the agency by United States Postal Service as unclaimed. The agency also mailed, by certified mail, a notice of noncompliance to her on August 12, 2016. In its notice of noncompliance, the agency requested a response from the grievant within five workdays of her receipt of the notice. This document was also returned to the agency as unclaimed. The agency now 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 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 agency's request for a compliance ruling may be premature because neither of the certified mailings sent by the agency appear to have been received by the grievant. Based on a review of the information submitted, however, it appears that the grievant has now resigned her employment with the agency and has not made any efforts to further her grievance since July. In the interest of expeditiously resolving the issues raised in this grievance, the grievant is ordered to correct her noncompliance **within ten work days of the date of this ruling** by notifying her human resources office in writing that she wishes either to advance the grievance or appeal to EDR. If she 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.⁴



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