

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: May 29, 2018;
Ruling No. 2018-4732; Agency: Department of Alcoholic Beverage Control;
Outcome: Grievant Not in Compliance.



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

COMPLIANCE RULING

In the matter of the Department of Alcoholic Beverage Control
Ruling Number 2018-4732
May 29, 2018

The Department of Alcoholic Beverage Control (the agency) has requested a compliance ruling related to the grievant's January 10, 2018 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 January 10, 2018, the grievant initiated an expedited grievance with the agency, challenging the issuance of three Group II Written Notices with termination.¹ After the second step meeting on January 19, 2018, the agency issued the grievant its second step response to the grievance via certified mail on February 5, 2018. It appears that this mailing was returned, unclaimed, to the agency. On April 18, 2018, the agency mailed a letter of noncompliance to the grievant via certified mail, again enclosing the second step response and requesting a response from her within five workdays of receipt of the letter. This letter appears to have been received by the grievant on April 20, 2018, and the grievant subsequently contacted the agency inquiring as to the next steps in the process. The grievant was informed of the next step by the agency, to submit a request for qualification to the agency head on the Grievance Form A, but the grievant has apparently not submitted such a request to the agency. Finally, on May 23, 2018, the agency requested a compliance ruling from EEDR regarding the January 10, 2018 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 EEDR'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

¹ It appears that the agency and the grievant agreed to handle the grievance via the expedited process, despite the fact that the grievant could have utilized the dismissal grievance process.

² *Grievance Procedure Manual* § 6.3.

³ *See id.*

claiming noncompliance may seek a compliance ruling from EEDR, 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 EEDR 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 EEDR's order.⁴

In this case, the grievant appears to have failed to advance or conclude her grievance within five workdays of receiving the agency's second resolution step response, as required by the grievance procedure.⁵ As the grievant has failed to advance or conclude her grievance in a timely manner, she has failed to comply with the grievance procedure. EEDR therefore orders the grievant 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 conclude the January 10, 2018 grievance or request qualification for hearing by so indicating on the Grievance Form A. 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).

EEDR's rulings on matters of compliance are final and nonappealable.⁶



Christopher M. Grab
Director
Office of Equal Employment and Dispute Resolution

⁴ While in cases of substantial noncompliance with procedural rules the grievance statutes grant EEDR the authority to render a decision on a qualifiable issue against a noncompliant party, EEDR favors having grievances decided on the merits rather than procedural violations. Thus, EEDR 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, EEDR will exercise its authority to rule against the party without first ordering the noncompliance to be corrected.

⁵ See *Grievance Procedure Manual* § 3.4. Though this grievance could have been initiated under the dismissal grievance process with the submission of the Grievance Form A directly to EEDR, the grievant and the agency has apparently agreed to use the expedited process in this case. As such, this issue is being determined under the requirements of the expedited process. *Id.*

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