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COMPLIANCE RULING

In the matter of the Department of Corrections
Ruling Number 2019-4942
June 21, 2019

The Department of Corrections (the “agency”) has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management¹ in relation to the grievant’s February 28, 2019 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 February 28, 2019, the grievant initiated a grievance with the agency. The third step response was sent to the grievant by certified mail on or about April 5. The tracking information provided by the agency indicates that the third step response was delivered to the grievant’s address on April 10. Having received no further response from the grievant, the agency attempted to send, via U.S. Mail, a notice of noncompliance to the address listed on the Grievance Form A on or about April 26. The notice of noncompliance appears to have been returned to the agency as undeliverable. The agency states that it then delivered a copy of the notice of noncompliance to the grievant via interdepartmental mail at his facility on or about May 10. Since more than five workdays have elapsed since the agency presumably notified the grievant of his alleged noncompliance and the grievant has not yet advanced or concluded his 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.² That process assures that the parties first communicate with each other about the noncompliance, and resolve any compliance problems voluntarily, without

¹ The Office of Equal Employment and Dispute Resolution has separated into two office areas: the Office of Employment Dispute Resolution and the Office of Equity, Diversity, and Inclusion. While full updates have not yet been made to the *Grievance Procedure Manual* to reflect this change, this Office will be referred to as “EDR” in this ruling. EDR’s role with regard to the grievance procedure remains the same.

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.⁴

In this case, the grievant appears to have failed to advance or conclude his grievance within five workdays of receiving the agency's third resolution step response, as required by the grievance procedure.⁵ While the agency has indicated that it delivered a copy of its notice of noncompliance to the grievant using the interdepartmental mail service at his facility, EDR has not reviewed anything to conclusively demonstrate that the grievant has actually been notified in writing of the alleged procedural violation.⁶ This is a situation in which EDR could direct the agency to give the grievant written notice of the alleged noncompliance relating to the February 28, 2019 grievance and allow the grievant five workdays to correct any noncompliance before seeking a compliance ruling. Based on a review of the information submitted by the parties, however, it is evident that more than five workdays have elapsed since the third step response was delivered to the grievant's address, and the grievant has not responded.

Accordingly, and in the interest of expeditiously resolving the issues raised in the grievances, the grievant is therefore ordered to correct his noncompliance **within ten workdays of the date of this ruling** by notifying his human resources office in writing that he wishes either to conclude the grievance or request qualification of his grievance for a hearing from the agency head. If he 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).

³ *See id.*


⁴ 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.

⁵ *See Grievance Procedure Manual* § 3.3.

⁶ The mailing of correspondence, properly addressed and stamped, raises a presumption of receipt of the correspondence by the addressee. *E.g.*, *Washington v. Anderson*, 236 Va. 316, 322, 373 S.E.2d 712, 715 (1988). In cases where a notice of noncompliance has been sent to a grievant's address via U.S. Mail, and in the absence of information to indicate that the mailing was improperly addressed, EDR assumes that it has been delivered. *See, e.g.*, EDR Ruling No. 2018-4731. Here, the notice of noncompliance was sent through the agency's internal mail system. The information in the grievance record is not sufficient to establish whether EDR could presume that the grievant has received the notice of noncompliance under these circumstances. However, the grievant has received notice of his noncompliance through correspondence involved in this ruling and this ruling itself.

⁶ *Grievance Procedure Manual* § 6.3.

EDR's rulings on matters of compliance are final and nonappealable.⁷



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⁷ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).