

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: November 8, 2017; Ruling No. 2018-4645; Agency: Virginia Department of Health; 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 Virginia Department of Health
Ruling Number 2018-4645
November 7, 2017

The Virginia Department of Health (the agency) has requested a compliance ruling related to the grievant's August 11, 2017 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 August 11, 2017, the grievant initiated a grievance with the agency. On October 6, 2017, the agency issued its third step response to the grievant via e-mail. On October 23, 2017, the agency issued a letter of noncompliance to the grievant, indicating that she had failed to advance or conclude her grievance and requesting a response within five workdays. Having apparently received no further response from the grievant, the agency requested a compliance ruling from EEDR regarding the August 11, 2017 grievance on November 6, 2017.

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 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.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 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

¹ *Grievance Procedure Manual* § 6.3.

² *See id.*

any qualifiable issue, unless the noncomplying party can show just cause for the delay in conforming to EEDR's order.³

In this case, the grievant appears to have failed to advance or conclude her grievance within five workdays of receiving the agency's third resolution step response, as required by the grievance procedure.⁴ Moreover, the agency notified the grievant of her noncompliance, but the grievant has not advanced or concluded her grievance.

As the grievant has apparently failed to advance or conclude her grievance in a timely manner, she has failed to comply with the grievance procedure. The Office of Equal Employment and Dispute Resolution (EEDR) at the Department of Human Resource Management 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 August 11, 2017 grievance or request qualification for hearing. 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.⁵



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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* § 3.3.

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