

Issue: Compliance – Grievance Procedure (documents); Ruling Date: January 17, 2013; Ruling No. 2013-3511; Agency: Virginia Department of Health; Outcome: No Ruling (premature).



*COMMONWEALTH of VIRGINIA*  
*Department of Human Resource Management*  
*Office of Employment Dispute Resolution*

**COMPLIANCE RULING**

In the matter of the Virginia Department of Health  
Ruling Number 2013-3511  
January 17, 2013

The grievant has sought a compliance ruling concerning her January 2, 2013 grievance with the Virginia Department of Health (the agency) due to the agency's alleged noncompliance in failing to provide requested documents.

FACTS

On or about December 6, 2012, the grievant received a Written Notice. The grievant sought documentation from the agency concerning that action and related matters on or about December 13, 2012. The grievant states that she has not received the documentation requested and has raised this issue to the agency in numerous e-mails. The grievance concerning the Written Notice and other matters was not initiated until January 2, 2013. The grievant appears to have reminded the agency in an e-mail dated January 4, 2013 that she was still seeking the requested documents. Again maintaining that she had not received the documents, she sent a follow-up demand on or about January 10, 2013. The grievant then submitted her request for a compliance ruling to the Office of Employment Dispute Resolution (EDR) on January 11, 2013. The grievant seeks relief on the merits due to the agency's alleged noncompliance with the grievance procedure.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>1</sup> 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 first notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance.<sup>2</sup> If the party fails to correct the alleged noncompliance, the complaining party may request a ruling from EDR.<sup>3</sup>

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<sup>1</sup> *Grievance Procedure Manual* § 6.

<sup>2</sup> *Grievance Procedure Manual* § 6.3.

<sup>3</sup> *Id.*

Whether an agency has failed to respond to a request for information unrelated to an active grievance is not within EDR's authority to address. Therefore, the grievant's request for documentation will only be considered made in conjunction with the grievance procedure when renewed or requested after the initiation of the grievance. The grievant did not initiate her grievance until January 2, 2013. As such, providing the grievant the benefit of the doubt, EDR will consider the grievant's January 4, 2013 e-mail as a renewed request for documentation pursuant to her grievance.<sup>4</sup> EDR will then assess whether any noncompliance has occurred after that point.

In this case, however, the grievant's request for a compliance ruling is premature because the grievant has not shown that she first notified the agency head in writing of the alleged violation and provided the agency five workdays to correct the purported noncompliance, as required by the grievance procedure.<sup>5</sup> Even if we assume that the grievant's January 10, 2013 e-mail should be considered a notice of noncompliance, it was not provided to the agency head as required by the grievance procedure.<sup>6</sup> Further, at the time the grievant initiated her ruling request with EDR, January 11, 2013, five workdays had not elapsed. If the grievant wishes to pursue this matter, she should provide a notice of noncompliance to the agency head and allow the agency five workdays to correct the alleged problems.<sup>7</sup> If the grievant remains dissatisfied with the agency's response after she has informed the agency head of the purported noncompliance and allowed five workdays for correction, she may seek a ruling request from EDR.

Although the grievant's current ruling request is premature, we provide the following guidance to the parties given the grievant's request for relief on the merits of her grievance. 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.<sup>8</sup> 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.

Even if the grievant's ruling request was considered timely, the facts as described by the grievant do not support a finding that the agency's conduct substantially violated the grievance procedure, much less that the agency was motivated by bad faith or a gross disregard of the grievance procedure. In short, there is a basic dispute over requested documents. Simple disagreements of this kind do not support a finding of a violation of a substantial procedural

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<sup>4</sup> It would not be appropriate to consider the January 4, 2013 email as a notice of noncompliance under the grievance procedure because the agency had not yet had sufficient time to respond to the request under the grievance procedure. *See Grievance Procedure Manual* § 8.2.

<sup>5</sup> *Id.*

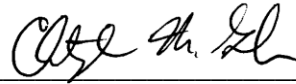
<sup>6</sup> *Id.* If there was another notice of noncompliance sent, it has not been provided to EDR.

<sup>7</sup> *See id.*

<sup>8</sup> *See* Va. Code § 2.2-3003(G).

requirement or bad faith. Consequently, there would be no basis to award relief on the merits of the grievance as requested by the grievant.

EDR's rulings on matters of compliance are final and nonappealable.<sup>9</sup>



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<sup>9</sup> See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).