

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: February 7, 2014; Ruling No. 2014-3806; Agency: Department of Corrections; 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 Corrections
Ruling Number 2014-3806
February 7, 2014

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 Management in relation to the grievant’s October 10, 2013 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 October 10, 2013, the grievant initiated a grievance with the agency. After receiving the first step response on November 4, 2013, the grievant advanced his grievance to the second step on or about November 5, 2013. At the time the second step-respondent attempted to schedule the second step meeting, the grievant was on VSDP leave.¹ On or about November 22, 2013, prior to the second step meeting occurring and without returning from leave, the grievant resigned his employment with the agency.

Following the grievant’s resignation, on December 10, 2013, the agency asked the grievant to provide notification of whether he wished to resolve or proceed with his grievance by December 20, 2013. The agency further advised the grievant that if he failed to provide the requested notification, it would seek to have the grievance administratively closed by EDR.² The grievant has not responded to the agency’s request. 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.³ 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

¹ In addition, while the grievant appears to have been on VSDP leave, he had a worker’s compensation claim approved.

² The agency sent this request by both email and regular mail.

³ *Grievance Procedure Manual* § 6.3.

in writing and allow five workdays for the opposing party to correct any noncompliance.⁴ 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.⁵

In this case, the grievant advanced his grievance to the second step but was out of work on VSDP leave before the second step meeting occurred. As the grievant remained on leave until his resignation, there is an argument that he did not fail to advance his grievance while he remained employed by the agency. Since his resignation, however, the agency has asked the grievant to provide notification of either his desire to move forward with the second step meeting or to conclude the grievance, and the grievant has failed to respond to the agency's inquiry. Further, the grievant has not presented any evidence that he is unable to advance his grievance at this time or to otherwise respond to the agency's inquiry.

Under these facts, as the grievant has not timely responded to the agency's request to either advance or conclude his grievance, he has failed to comply with the grievance procedure. We therefore order the grievant 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 advance to the second step meeting or conclude his grievance. 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).

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



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Director
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⁴ See *id.*

⁵ 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.

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