

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: January 5, 2015; Ruling No. 2015-3948, 2015-4069; Agency: Department of Behavioral Health and Developmental Services; 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 Behavioral Health and Developmental Services
Ruling Numbers 2015-3948, 2015-4069
January 5, 2015

The Department of Behavioral Health and Developmental Services (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 May 7, 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 her grievance.

FACTS

On or about May 7, 2013, the grievant initiated a grievance with the agency. On or about October 27, 2014, the agency states it sent the grievant, by certified mail, a copy of the agency head’s decision denying qualification of the grievance for hearing. After this letter was returned to the agency unclaimed, the agency states it mailed a second copy by regular mail on December 2, 2014. It does not appear that the grievant has either advanced or concluded her grievance since that date. As more than five workdays have elapsed since the grievant presumably received¹ the qualification decision and she has not yet advanced or concluded her grievance, the agency seeks a compliance ruling allowing it to administratively close the grievance.²

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 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

¹ 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); *see also Grievance Procedure Manual* § 6.3 at n.5.

² The agency had previously requested a compliance ruling on this grievance in July 2014, and the request was assigned the ruling number 2015-3948. After consultation with EDR, however, the agency elected to re-start the grievance at the second step, and the ruling request was stayed by EDR.

³ *Grievance Procedure Manual* § 6.3.

⁴ *See id.*

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 agency's request for a compliance ruling appears to be premature. because it has not shown that it first notified the grievant in writing of the alleged procedural violation. There is no indication that the agency provided the grievant with a notice of noncompliance informing her that her grievance is not in compliance with the grievance procedure after the agency head's qualification decision was sent to her.⁶ Ordinarily, this is a situation in which EDR would decline to rule on the noncompliance and direct the agency to give written notice of the alleged noncompliance to the grievant and allow the grievant five work days to correct any possible issues.

Based on a review of the information submitted by the parties, however, it is evident that more than five workdays have elapsed since the agency provided the grievant with the qualification decision and the grievant has not responded. Further, it appears that during the course of the grievance, the agency has granted relief on most, if not all, of the issues raised. Thus, in the interest of expeditiously resolving the issues raised in this grievance, the grievant is therefore ordered to correct her noncompliance **within ten workdays of the date of this ruling** by notifying her human resources office in writing that she wishes either to conclude the grievance or appeal the qualification decision to EDR.⁷ 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).

EDR's rulings on matters of compliance are final and nonappealable.⁸



Christopher M. Grab
Director
Office of Employment Dispute Resolution

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 In addition, the agency does not appear to have copied the grievant on its request for a ruling, as is required by the grievance procedure. *Grievance Procedure Manual* § 6.3.

⁷ See *Grievance Procedure Manual* § 4.3.

⁸ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).