

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: February 24, 2015; Ruling No. 2015-4101; 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 2015-4101
February 24, 2015

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 December 24, 2014 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

The agency states that on or about December 24, 2014, the grievant initiated a grievance with the agency.¹ The first step response was apparently mailed to the grievant on or about December 29. The agency additionally states that the grievant has since retired from his position with the agency. Having received no further response from the grievant, on or about January 20, 2015, the agency sent a notice of noncompliance to the grievant. Since more than five workdays have elapsed since the agency 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 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

¹ The agency has advised EDR that the grievant “was mistakenly mailed the only copy of his grievance and first step response.” As a result, EDR has been unable to view the grievance and response.

² *Grievance Procedure Manual* § 6.3.

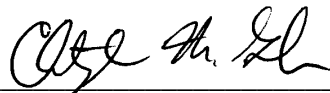
³ *See id.*

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

Based on the agency's representations, the grievant appears to have failed to advance or conclude his grievance within five workdays of presumably receiving the agency's first resolution step response, as required by the grievance procedure.⁵ Moreover, the agency notified the grievant of his noncompliance and the grievant has not advanced or concluded his grievance.

As the grievant has failed to advance or conclude his grievance in a timely manner, it appears that 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 conclude the grievance or proceed to the second step. 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).⁶

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



Christopher M. Grab
Director
Office of Employment Dispute Resolution

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* § 3.1.

⁶ In addition, given that the grievance form and apparent agency response have not been reviewed in this Office, there could be other factors that would support EDR reopening the grievance on a showing of appropriate circumstances by the grievant.

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