

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: April 9, 2015; Ruling No. 2015-4131; 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 Virginia Department of Behavioral Health & Developmental Services
Ruling Number 2015-4131
April 9, 2015

The Department of Behavioral Health & Developmental Services (the agency) has requested a compliance ruling related to the grievant's December 19, 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 her grievance.

FACTS

On or about December 19, 2014, the grievant initiated a grievance with the agency. The agency held the second resolution step meeting with the grievant on January 15, 2015. On February 4, 2015, the agency mailed the second resolution step response to the grievant via certified and U.S. Mail.¹ On March 10, 2015, the agency sent a letter of noncompliance to the grievant via certified and U.S. Mail, indicating that the agency had not received a response from her and advising her to either advance or conclude her grievance within five workdays.² To date, the agency has received no response from the grievant.

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 certified mailing was returned to the agency, unclaimed, on March 9, 2015. However, 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). Therefore, EDR will presume the second step response was received by regular mail.

² On April 1, 2015, the certified mailing was again returned, unclaimed, to the agency. For the reasons stated in the prior footnote, EDR will presume the letter of noncompliance was received by the grievant.

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 grievant appears to have failed to advance or conclude her grievance within five workdays of receiving the agency's second resolution step response, as required by the grievance procedure.⁶ 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 Employment Dispute Resolution (EDR) 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 or advance the grievance to the third resolution step. 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).⁷

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



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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 *Grievance Procedure Manual* § 3.2.

⁷ In addition, given that the grievant has not responded to or claimed the certified mailings discussed in this ruling, an additional factor that will be considered is whether the address provided was the grievant's current address at the applicable time.

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