

Issue: Compliance – Grievance Procedure (5-day Rule); Ruling Date: January 18, 2018; Ruling No. 2018-4666; Agency: Virginia Department of Transportation; Outcome: Grievant Not in Compliance.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Equal Employment and Dispute Resolution

COMPLIANCE RULING

In the matter of the Virginia Department of Transportation
Ruling Number 2018-4666
January 18, 2018

The Virginia Department of Transportation (the agency) has requested a compliance ruling related to the grievant's July 11, 2017 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 July 11, 2017, the grievant initiated a grievance with the agency. On November 28, 2017, the agency mailed the grievant its third step response to the grievance via certified and U.S. Mail. On December 13, 2017, the agency mailed a letter of noncompliance to the grievant via certified and U.S. Mail, indicating that the agency had not received a response from him and requesting a response within five workdays upon his receipt of the letter.¹ 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.² That process assures that the parties first communicate with each other about the noncompliance, and resolve any compliance problems voluntarily, without EEDR'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 EEDR, who may in turn order the

¹ For purposes of this ruling, EEDR will assume the grievant received the agency's notice of noncompliance by regular mail because there is nothing to indicate that it may have been sent to an incorrect address or was otherwise improperly addressed. *E.g.*, *Washington v. Anderson*, 236 Va. 316, 322, 373 S.E.2d 712, 715 (1988) (holding that the mailing of correspondence, properly addressed and stamped, raises a presumption of receipt of the correspondence by the addressee). Tracking information for the certified mailing does not indicate that it was received.

² *Grievance Procedure Manual* § 6.3.


³ *See id.*

party to correct the noncompliance or, in cases of substantial noncompliance, render a decision against the noncomplying party on any qualifiable issue. When an EEDR 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 EEDR's order.⁴

In this case, the grievant appears to have failed to advance or conclude his grievance within five workdays of receiving the agency's third resolution step response, as required by the grievance procedure.⁵ Moreover, the agency notified the grievant of his noncompliance, but the grievant has not advanced or concluded his grievance.

As the grievant has apparently failed to advance or conclude his grievance in a timely manner, he has failed to comply with the grievance procedure. The Office of Equal Employment and Dispute Resolution (EEDR) at the Department of Human Resource Management therefore orders the grievant to correct his noncompliance **within ten work days of the date of this ruling** by notifying his human resources office in writing that he wishes either to conclude the July 11, 2017 grievance or request qualification for hearing. 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).

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



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Director

Office of Equal Employment and Dispute Resolution

⁴ While in cases of substantial noncompliance with procedural rules the grievance statutes grant EEDR the authority to render a decision on a qualifiable issue against a noncompliant party, EEDR favors having grievances decided on the merits rather than procedural violations. Thus, EEDR 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, EEDR will exercise its authority to rule against the party without first ordering the noncompliance to be corrected.

⁵ See *Grievance Procedure Manual* § 3.3.

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