

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: January 4, 2019; Ruling No. 2019-4831, 2019-4832, 2019-4833; 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 Numbers 2019-4831, 2019-4832, 2019-4833  
January 4, 2019

The Virginia Department of Transportation (the agency) has requested a compliance ruling related to three grievances initiated by the grievant. 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 grievances.

FACTS

The grievant initiated three separate grievances with the agency on or about July 25, 2018, July 31, 2018, and August 1, 2018. On or about September 24, 2018, the agency issued the grievant a joint third step response to the grievances. On November 6, 2018, the agency sent a letter of noncompliance to the grievant, via certified mail, indicating that the agency had not received a response from him and would request administrative closure of the grievance if he did not respond within five workdays of receipt of the letter. However, this mailing was returned, unclaimed, to the agency. On November 19, 2018, the agency sent the same letter of noncompliance to the grievant, via U.S. Mail.<sup>1</sup> Not having received a response from the grievant, on December 21, the agency requested a compliance ruling from EEDR regarding all three grievances.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>2</sup> 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.<sup>3</sup> 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

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<sup>1</sup> 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).

<sup>2</sup> *Grievance Procedure Manual* § 6.3.

<sup>3</sup> *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.<sup>4</sup>

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

As the grievant has apparently failed to advance or conclude his grievances in a timely manner, he has failed to comply with the grievance procedure. EEDR therefore orders the grievant to correct his noncompliance **within five work days of the date of this ruling** by notifying his human resources office in writing that he wishes either to conclude the three grievances of July 25, 2018, July 31, 2018, and August 31, 2018, or request qualification for hearing. If he does not, the agency may administratively close the grievances without any further action on its part. The grievances 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.<sup>6</sup>



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<sup>4</sup> 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.

<sup>5</sup> See *Grievance Procedure Manual* § 3.3.

<sup>6</sup> See Va. Code §§ 2.2-1202.1(5); 2.2-3003(G).