

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: March 19, 2019; Ruling No. 2019-4871; Agency: Department of Corrections; 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 Department of Corrections
Ruling Number 2019-4871
March 19, 2019

The Department of Corrections (the agency) has requested a compliance ruling from the Office of Equal Employment and Dispute Resolution (“EEDR”) at the Department of Human Resource management in relation to the grievant’s August 31, 2018 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 or about August 31, 2018, the grievant initiated a grievance with the agency. On or about December 18, 2018, the agency sent the grievant its third step response to the grievance.¹ On January 25, 2019, the agency sent a letter of noncompliance to the grievant, via U.S. Mail, indicating that the agency had not received a response from him and would request closure of the grievance if he did not respond within five workdays of receipt of the letter.² Finally, on February 25, 2019, the agency requested a compliance ruling from EEDR regarding the August 31, 2018 grievance.

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 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.⁴ If the opposing party fails to correct the noncompliance within this five-day period, the party

¹ The agency has provided a copy of the third step response itself, but no indication that the grievance form was completed at that step. While the completion of the grievance form is a necessary step, the lack of a copy of that document at this stage does not impact our ruling in this case. EEDR reached out to the grievant directly to determine his intentions and received no response. Further, as discussed below, the grievant has been sent a noncompliance letter, so it follows that if he intends to still pursue this grievance, he has received ample notice of what steps he must complete to do so through correspondence from the agency and this ruling.

² 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).

³ *Grievance Procedure Manual* § 6.3.

⁴ *See id.*

claiming noncompliance may seek a compliance ruling from EEDR, 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 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.⁵

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.⁶ 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. EEDR therefore orders the grievant to correct this 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 his August 31, 2018 grievance or request qualification of his grievance for a hearing from the agency head. 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.⁷



Christopher M. Grab
Director
Office of Equal Employment and Dispute Resolution

⁵ 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.

⁶ See *Grievance Procedure Manual* § 3.3.

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