

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: August 21, 2013; Ruling No. 2014-3687; Agency: Department of Juvenile Justice; 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 Juvenile Justice
Ruling Number 2014-3687
August 21, 2013

The Department of Juvenile Justice (“agency”) has requested a compliance ruling related to the grievant’s April 8, 2013 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 April 8, 2013, the grievant initiated a grievance with the agency. On or about April 22, 2013, the agency provided the second resolution step response to the grievant. On the same date, the agency also sent a memorandum requesting that the grievant inform the facility’s human resources supervisor whether he intended to advance or conclude his grievance within five workdays upon receipt of the memorandum. On June 4, 2013, the agency mailed a letter of noncompliance to the grievant by certified mail, indicating the agency had not received a response from the grievant. The certified mailing was unclaimed.

Since more than five workdays have elapsed since the grievant received the second step response, 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.¹ 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.² 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

¹ *Grievance Procedure Manual* § 6.3.

² *See id.*

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.³

In this case, the agency's request for a compliance ruling appears to be premature because the agency has not shown that it first notified the grievant in writing of the alleged procedural violation. The notice of noncompliance was not received by the grievant. Based on a review of the information submitted by the parties, however, it is evident that more than five workdays have elapsed since the agency provided the grievant with the second step response and the grievant has not responded.⁴ In the interest of expeditiously resolving the issues raised in this grievance, the grievant is ordered 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 grievance or proceed to the third 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).

EDR's rulings on matters of compliance are final and nonappealable.⁵



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³ 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.

⁴ Although the grievant has not received the agency's notice of noncompliance, EDR has notified the grievant that the agency has requested a compliance ruling regarding the grievant's failure to advance or conclude her grievance.

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