

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: September 12, 2014; Ruling No. 2015-3996, 2015-3997; Agency: Department of Corrections; 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 Corrections
Ruling Numbers 2015-3996, 2015-3997
September 12, 2014

The Department of Corrections (the “agency”) has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management in relation to the grievant’s April 21, 2014 and April 26, 2014 grievances. 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 two grievances with the agency on or about April 21, 2014 and April 26, 2014, respectively. Third step responses to both grievances were issued to the grievant on or about May 29, 2014. Having received no further response from the grievant indicating whether he wished to advance or conclude the grievances, on or about August 19, 2014, the agency mailed, by certified mail, a notice of noncompliance to the grievant.¹ In its notice of noncompliance, the agency requested a response from the grievant within five workdays of his receipt of the notice. The certified mail receipt indicates that the notice of noncompliance was delivered to the grievant on August 28. As more than five workdays have elapsed since the grievant received notice of his alleged noncompliance and he has not yet advanced or concluded his grievances, the agency seeks a compliance ruling allowing it to administratively close the grievances.

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 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.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 EDR, who may in turn order the party to correct the noncompliance or, in cases of substantial noncompliance, render a decision against

¹ At some point after the third step responses were issued, the grievant resigned from the agency.

² *Grievance Procedure Manual* § 6.3.


³ *See id.*

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.⁴

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 responses, as required by the grievance procedure.⁵ Moreover, the agency notified the grievant of his noncompliance and he 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. We therefore order the grievant to correct his noncompliance **within ten workdays of the date of this ruling** by notifying his human resources office in writing that he wishes either to conclude one or both of the two grievances or request qualification from the agency head for one or both of the two grievances. 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).

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



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⁴ 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.

⁵ See *Grievance Procedure Manual* § 3.3.

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