

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: September 15, 2014; Ruling No. 2015-3998; 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 Number 2015-3998
September 15, 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 11, 2014 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 her grievance.

FACTS

On or about April 11, 2014, the grievant initiated a grievance with the agency. The third step response was issued to the grievant on or about May 27, 2014. Having received no further response from the grievant, on or about August 19, 2014, the agency mailed, by certified mail, a notice of noncompliance to her. In its notice of noncompliance, the agency requested a response from the grievant within five workdays of her receipt of the notice. The agency also sent the grievant a copy of the notice by email. Although the U.S. Postal Service attempted delivery of the certified letter, the letter was not claimed by the grievant. The agency also never received a read receipt for the copy of the letter sent by email. The agency now 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 a grievance is in noncompliance, the ruling will (i) order the noncomplying party to correct its

¹ *Grievance Procedure Manual* § 6.3.

² *See id.*

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, it appears the grievant did not receive the letter sent by certified mail, and it is unclear whether she read the emailed copy of the letter. Based on a review of the information submitted, however, it is evident that more than five workdays have elapsed since the agency provided the grievant with the third 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 to correct her noncompliance **within ten work days of the date of this ruling** by notifying her human resources office in writing that she wishes either to conclude the grievance or request qualification of her grievance for a hearing. If she 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).