

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: November 19, 2014; Ruling No. 2015-4035; Agency: Department of Corrections; Outcome: Grievant 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 2015-4035
November 19, 2014

The Department of Corrections (the agency) has requested a compliance ruling related to the grievant's grievance dated August 5, 2014. 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 5, 2014, the grievant initiated a grievance with the agency. On or about September 5, 2014, the first step response was sent to the grievant by certified mail. Having received no response, on October 21, 2014, the agency mailed the grievant a letter of noncompliance, also by certified mail, requesting a response within five workdays upon receipt of the noncompliance letter. Both certified mailings have been returned to the agency unclaimed. The agency now seeks to close the grievance because of the grievant's alleged noncompliance with the grievance procedure.

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 noncompliance within a specified time period, and (ii) provide that if the noncompliance is not


¹ *Grievance Procedure Manual* § 6.3.

² *See id.*

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. There is no indication that the grievant ever received the first step response. Thus, in the interest of expeditiously resolving the issues raised in these grievances, the agency is ordered to provide a copy of the first step response on the Grievance Form A to the grievant either in person, by mail, or by e-mail **within five workdays of the date of this ruling.**⁴

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 See *Grievance Procedure Manual* § 3.1.

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