

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: December 11, 2014; Ruling No. 2015-4061; Agency: Virginia Department of Transportation; 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 Virginia Department of Transportation
Ruling Number 2015-4061
December 11, 2014

The Virginia Department of Transportation (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 August 28, 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 August 28, 2014, the grievant initiated a grievance with the agency. After proceeding through the management resolution steps, the agency head declined to qualify the grievance for a hearing on or about November 10, 2014. It does not appear that the grievant has either appealed the agency head’s qualification to EDR or concluded her grievance since that date. As more than five workdays have elapsed since the grievant presumably received the agency head’s qualification decision and she has not yet advanced or concluded her 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 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 because it has not shown that it first notified the grievant in writing of the alleged procedural violation. There is no indication that the agency has provided the grievant with a notice of noncompliance informing her that her grievance is not in compliance with the grievance procedure. 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 agency head's qualification decision and the grievant has not responded. In the interest of expeditiously resolving the issues raised in this grievance, the grievant is therefore ordered 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 appeal the agency head's qualification decision to EDR.⁴ 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 See *Grievance Procedure Manual* § 4.3.

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