

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: December 17, 2014; Ruling No. 2015-4065; Agency: Virginia Department of Fire Programs; 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 Fire Programs  
Ruling Number 2015-4065  
December 17, 2014

The Virginia Department of Fire Programs (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 October 31, 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 his grievance.

FACTS

On or about October 31, 2014, the grievant initiated a grievance with the agency. The second step response was issued to the grievant on or about November 17, 2014, but it appears to have been returned to the agency as undeliverable. After the grievant failed to advance his grievance from the second step, on December 2, 2014, the agency provided the grievant with notice of noncompliance via email. In its notice of noncompliance, the agency requested a response from the grievant within five workdays of his receipt of the notice. As the grievant has not responded to the notice of noncompliance, 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.<sup>1</sup> 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.<sup>2</sup> 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

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<sup>1</sup> *Grievance Procedure Manual* § 6.3.

<sup>2</sup> *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.<sup>3</sup>

In this case, it appears the grievant may not have received the second step response. 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 notice of noncompliance and the grievant has not responded.<sup>4</sup> In the interest of expeditiously resolving the issues raised in this grievance, the grievant is ordered to correct this matter **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 advance the grievance to the next step to request qualification of the grievance for a hearing. 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.<sup>5</sup>



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Director  
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<sup>3</sup> 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.

<sup>4</sup> In addition to having presumably received the agency's notice of noncompliance, the grievant has also been notified by EDR that the agency has requested a compliance ruling regarding the grievant's failure to advance or conclude his grievance.

<sup>5</sup> See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).