

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: August 18, 2015; Ruling No. 2016-4210; 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 2016-4210, 2016-4213  
August 18, 2015

The Department of Corrections (the agency) has requested a compliance ruling related to two grievances filed on or about April 8, 2015 and April 28, 2015. 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

On or about April 8, 2015 and April 28, 2015, the grievant initiated two grievances with the agency. On or about June 5, 2015, the agency issued the grievant its third step responses to both grievances. On July 17, 2015, the agency sent, by email and U.S. mail, a letter of noncompliance to the grievant, indicating that the agency had not received a response from him regarding either grievance. Additionally, the agency requested a response from the grievant within five workdays upon receipt of the noncompliance letter.<sup>1</sup>

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>2</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>3</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

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<sup>1</sup> It appears that the grievant received the emailed notice of noncompliance, as he responded on July 22, 2015, with a question to the agency's Grievance Coordinator. Further, for purposes of this ruling, we will assume the grievant received the agency's mailed notice of noncompliance because there is nothing to indicate that it may have been improperly addressed. *Cf., e.g.,* Washington v. Anderson, 236 Va. 316, 322, 373 S.E.2d 712, 715 (1988) (holding that the mailing of correspondence, properly addressed and stamped, raises a presumption of receipt of the correspondence by the addressee).

<sup>2</sup> *Grievance Procedure Manual* § 6.3.

<sup>3</sup> *See id.*

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.<sup>4</sup>

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 response, as required by the grievance procedure.<sup>5</sup> Moreover, the agency notified the grievant of his noncompliance, but the grievant 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. The Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management therefore orders the grievant to correct his noncompliance **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 April 8, 2015 and April 28, 2015 grievances or request qualification for hearing. 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.<sup>6</sup>



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<sup>4</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>5</sup> See *Grievance Procedure Manual* § 3.3.

<sup>6</sup> See Va. Code §§ 2.2-1202.1(5); 2.2-3003(G).