

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: November 10, 2015; Ruling No. 2016-4267; 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 2016-4267  
November 10, 2015

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 June 8, 2015 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 June 8, 2015, the grievant initiated a grievance with the agency. On or about September 22, 2015, the agency advised the grievant that his request for qualification had been denied. After the grievant failed to appeal the qualification decision to EDR or conclude the grievance within five workdays, on October 12, 2015, the agency sent the grievant written notice of noncompliance by email. This written notice indicated that the agency had not received a response from him and advised him to either appeal or conclude his grievance within five workdays. The agency has indicated that it has received no response from the grievant.

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, the grievant appears to have failed to advance or conclude his grievance within five workdays of receiving the agency head's qualification decision, as required by the grievance procedure.<sup>4</sup> Moreover, the agency notified the grievant of his noncompliance, but the grievant has not advanced or concluded his grievance.

As the grievant has apparently failed to advance or conclude his grievance in a timely manner, he has failed to comply with the grievance procedure. We therefore order the grievant to correct his noncompliance **within ten workdays of the date of this ruling** by notifying his human resources office in writing that he wishes either to conclude the grievance or appeal the qualification decision to EDR. 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  
Office of Employment Dispute Resolution

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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> See *Grievance Procedure Manual* § 4.2.

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