

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: November 23, 2015; Ruling No. 2016-4273; Agency: Department of Juvenile Justice; 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 Juvenile Justice
Ruling Number 2016-4273
November 23, 2015

The Department of Juvenile Justice (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 July 10, 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 her grievance.

FACTS

On or about July 10, 2015, the grievant initiated a grievance with the agency.¹ On or about August 12, 2015, the agency advised the grievant that her 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 15, 2015, the agency sent the grievant written notice of noncompliance by certified mail.² This written notice indicated that the agency had not received a response from her and advised her to either appeal or conclude her 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.³ 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.⁴ 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

¹ Although the grievance was dated June 26, 2015, it does not appear to have been initiated with the agency until July 10, 2015.

² The agency has not provided any evidence showing that the noncompliance notice was received by the grievant.

³ *Grievance Procedure Manual* § 6.3.

⁴ *See id.*

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 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.⁵

In this case, the agency's request for a compliance ruling may be premature because it is unclear whether the certified mailing sent by the agency was received by the grievant. 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 qualification decision and the grievant has not responded.⁶ In the interest of expeditiously resolving the issues raised in this grievance, the grievant is ordered to 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 to EDR. 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.⁷



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⁵ 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.

⁶ Although the grievant has not received the agency's notice of noncompliance, EDR has notified the grievant that the agency has requested a compliance ruling regarding the grievant's failure to advance or conclude her grievance.

⁷ See Va. Code §§ 2.2-1202.1(5); 2.2-3003(G).