



EMILY S. ELLIOTT
DIRECTOR

COMMONWEALTH OF VIRGINIA
Department Of Human Resource Management
Office of Employment Dispute Resolution

James Monroe Building
101 N. 14th Street, 12th Floor
Richmond, Virginia 23219
Tel: (804) 225-2151
(TTY) 711

COMPLIANCE RULING

In the matter of the Virginia Department of Transportation
Ruling Number 2020-5048
February 13, 2020

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 (“DHRM”)¹ in relation to the grievant’s alleged failure to comply with the time limits set forth in the grievance procedure for advancing or concluding his grievance.

On August 30, 2019, the grievant initiated a grievance with the agency challenging, in part, his receipt of a written counseling memorandum. The agency states that the third step response and the grievance package were sent to the grievant by both certified mail and U.S. mail on October 30.² The third step-respondent upheld the issuance of the counseling memorandum, but modified it by removing certain statements to which the grievant objected.³ Having received no further response from the grievant indicating whether he wished to advance or conclude the grievance, the agency then sent, by certified mail and email, a notice of noncompliance to him on November 27.⁴ In its notice of noncompliance, the agency requested a response from the grievant within five workdays of his receipt of the notice. Based on the grievant’s alleged noncompliance with the grievance procedure, the agency seeks a compliance ruling allowing it to administratively close the grievance.

While this ruling was pending, the grievant contacted EDR by email and stated that he did not receive the third step response and grievance package when they were originally mailed to him.⁵ According to the grievant, it appears that he contacted the agency after receiving the notice

¹ The Office of Equal Employment and Dispute Resolution has separated into two office areas: the Office of Employment Dispute Resolution and the Office of Equity, Diversity, and Inclusion. While full updates have not yet been made to the *Grievance Procedure Manual* to reflect this change, this Office will be referred to as “EDR” in this ruling. EDR’s role with regard to the grievance procedure remains the same.

² Documentation provided to EDR by the agency appears to indicate that the certified mailing was not delivered to or claimed by the grievant. The certified package was returned to the agency on or about January 7, 2020.

³ It is unclear whether the counseling memo was or has been modified. No modified copy was provided as part of the third step response.

⁴ The certified mailing tracking information for the agency’s notice of noncompliance indicates that the document was delivered to the grievant’s address on November 29, 2019.

⁵ Ordinarily, the mailing of correspondence, properly addressed and stamped, raises a presumption of receipt of the correspondence by the addressee. *E.g.*, *Washington v. Anderson*, 236 Va. 316, 322, 373 S.E.2d 712, 715 (1988). While

of noncompliance to explain that the third step response had not been delivered to him. The agency then sent the grievant a second copy of the third step response by U.S. Mail, which he confirms he received several later. However, the grievant states he did not receive the rest of the grievance package with the mailing. The grievant also informed EDR that he does not agree with the third step-respondent's revision of the counseling memorandum because it does not fully address the concerns he raised in the grievance and prefers that the counseling memorandum remain unmodified as it was originally issued.

Finally, the grievant has confirmed to EDR that he does not wish to proceed further with the grievance and states that he would like the agency to return the grievance package to him. Based on the grievant's representations, EDR considers this grievance concluded. However, the grievant's request for a copy of the grievance package is reasonable and the agency should provide the grievant with a copy as soon as possible.

EDR's rulings on matters of compliance are final and nonappealable.⁶



Christopher M. Grab
Director
Office of Employment Dispute Resolution

EDR would ordinarily assume that the grievant received the agency's third step response by regular mail because it was properly addressed, there is no basis for EDR to question the credibility of the grievant's assertion here.

⁶ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).