



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) 225-2131
(TTY) 711

COMPLIANCE RULING

In the matter of the Department of Corrections
Ruling Number 2020-5115
June 30, 2020

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 (DHRM) in relation to the grievant’s February 28, 2020 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 February 28, 2020, the grievant initiated a grievance with the agency. On March 18, 2020, the agency sent the Grievance Form A to the grievant by mail, with the first-step response included in the appropriate field. The agency’s cover letter included instructions for the grievant to conclude the grievance or advance it to the next step. The record reflects no further response by the grievant. By undated letter, the agency notified the grievant that he was out of compliance with the response timeline established by the grievance procedure, advising him that he could correct his noncompliance with an appropriate response within five workdays of the notice.¹ On June 18, 2020, having received no further response from the grievant, the agency requested a compliance ruling to permit administrative closure of the grievance.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.² 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 of any

¹ The agency has represented that it emailed its noncompliance letter on or about May 6, 2020, though the undated letter itself appears to reflect it was mailed. Generally, 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). Accordingly, for purposes of this ruling EDR will assume the grievant received the agency’s notice of noncompliance because there is nothing to indicate that it was not sent as the agency claims or that it was improperly addressed.

² *Grievance Procedure Manual* § 6.3.

noncompliance in writing and allow five workdays for the opposing party to correct it.³ 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, which 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 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.⁴

In this case, the available facts show that, contrary to the grievance procedure's requirements, the grievant did not advance or conclude his grievance within five workdays of receiving the agency's first-step response.⁵ Further, more than one month has elapsed since the agency notified the grievant of noncompliance, providing the opportunity to correct it. The correction period now has long passed, with no indication that the grievant intends to advance or conclude his grievance.

Because the grievant has apparently neither advanced nor concluded his grievance at this time, he has failed to comply with the grievance procedure. EDR therefore orders the grievant to correct his noncompliance **within 10 workdays of the date of this ruling** by notifying his human resources office in writing that he wishes either to conclude the grievance or to advance it to the second step. If he has taken neither course after 10 workdays, the agency may administratively close the grievance with no further action required on its part. The grievance may then 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.⁶



Christopher M. Grab
Director
Office of Employment Dispute Resolution

³ See *id.*

⁴ 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 to be 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.

⁵ See *Grievance Procedure Manual* § 3.1.

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