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**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 2021-5259  
May 21, 2021

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 January 20, 2021 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 January 20, 2021, the grievant initiated a grievance with the agency. On January 28, 2021, the agency mailed the Grievance Form A to the grievant, completed at the first management step.<sup>1</sup> By letter dated March 22, 2021 and sent to the grievant via certified mail,<sup>2</sup> the agency notified the grievant that it had not received an indication from him whether he wished to advance or conclude his grievance following the first-step response, as required by the grievance procedure. The letter advised that the grievant should return the Grievance Form A indicating his decision within five workdays. On May 6, 2021, having received no further response from the grievant, the agency requested that EDR issue a compliance ruling allowing the agency to administratively close the grievance.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>3</sup> That process assures that the parties first communicate with each other about the noncompliance and resolve any compliance problems voluntarily, without EDR’s

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<sup>1</sup> 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 first-step response because there is nothing to indicate that it was improperly addressed.

<sup>2</sup> Tracking information indicates that the mailing was delivered on March 24, 2021.

<sup>3</sup> *Grievance Procedure Manual* § 6.3.

involvement. Specifically, the party claiming noncompliance must notify the other party of any noncompliance in writing and allow five workdays for the opposing party to correct it.<sup>4</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, 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 EDR finds that either party to a grievance is in noncompliance, its ruling will (1) order the noncomplying party to correct its noncompliance within a specified time period, and (2) 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>5</sup>

In this case, the available facts show that, contrary to the grievance procedure's requirements, the grievant has not advanced or concluded his grievance within five workdays of receiving the agency's first-step response.<sup>6</sup> Moreover, almost two months after submitting its first-step response, the agency sent the grievant effective notice of his noncompliance and advised him of the opportunity to correct it.<sup>7</sup> Yet no evidence suggests that the grievant has subsequently taken appropriate steps to advance or conclude his grievance.

Therefore, 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 to advance or conclude his grievance. If he does not do so, 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>8</sup>

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<sup>4</sup> *See id.*

<sup>5</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 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.

<sup>6</sup> *See Grievance Procedure Manual* § 3.1.

<sup>7</sup> It appears that the agency sent an initial notice by email that did not offer the full five-workday period to correct non-compliance that the grievance procedure requires. However, the agency's notice by certified mail was consistent with the grievance procedure and therefore provided effective notice of the opportunity to correct the grievant's non-compliance.

<sup>8</sup> *See* Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).