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**COMPLIANCE RULING**

In the matter of the Department of Corrections  
Ruling Number 2021-5280  
June 25, 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 September 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 the grievance.

FACTS

On or about September 28, 2020, the grievant initiated a grievance with the agency. The agency states that the third step response was mailed certified<sup>1</sup> to the grievant on December 4, 2020. Having received no further response from the grievant, the agency then sent a notice of noncompliance to the grievant via email on or about June 11, 2021.<sup>2</sup> In its notice of noncompliance, the agency requested a response from the grievant within five workdays of receipt of the notice. As more than five workdays have elapsed since the agency notified the grievant of the alleged noncompliance and the grievant has not yet advanced or concluded the grievance, the agency seeks a compliance ruling allowing it 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 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>4</sup> If the opposing party fails to

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<sup>1</sup> Tracking information indicates that the mailing was delivered on December 7, 2020.

<sup>2</sup> For purposes of this ruling, EDR will assume the grievant received the agency’s emailed notice of noncompliance because there is nothing to indicate that it may have been sent to an incorrect email address or was otherwise improperly addressed. *Cf., e.g.,* Washington v. Anderson, 236 Va. 316, 322, 373 S.E.2d 712, 715 (1988) (holding that the mailing of correspondence, properly addressed and stamped, raises a presumption of receipt of the correspondence by the addressee).

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

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

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 EDR finds that either party to a grievance is in noncompliance, its 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.<sup>5</sup>

In this case, the grievant appears to have failed to advance or conclude the grievance within five workdays of receiving the agency's third resolution step response, as required by the grievance procedure.<sup>6</sup> Moreover, the grievant has not advanced or concluded the grievance since receiving the agency's notice of noncompliance.

As the grievant has apparently failed to advance or conclude the grievance in a timely manner, the grievant has failed to comply with the grievance procedure. EDR therefore orders the grievant to correct the noncompliance **within ten workdays of the date of this ruling** by notifying the agency's human resources office in writing that the grievant wishes to either conclude the grievance or request qualification of the grievance for a hearing from the agency head. If the grievant 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>7</sup>

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<sup>5</sup> Although the grievance statutes grant EDR the authority to render a decision on a qualifiable issue against a noncompliant party in cases of substantial noncompliance with procedural rules, 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>6</sup> See *Grievance Procedure Manual* § 3.3.

<sup>7</sup> See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).