

Issue: Compliance/5 day rule; Ruling Date: October 8, 2002; Ruling #2002-175;
Agency: Department of Forestry; Outcome: ruling not issued on appeal issue.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Forestry
Ruling Number 2002-175
October 8, 2002

The grievant has requested a compliance ruling regarding his December 21, 2001 grievance with the Department of Forestry (DOF). The grievant is challenging the agency's claim that he failed to appeal this Department's August 5, 2002 ruling to the circuit court within the mandated time period.

FACTS

The grievant is employed as an Area Forester. On December 21, 2001, he initiated a grievance with the DOF claiming that management had misapplied the travel reimbursement policy. The grievance was unresolved through the resolution steps and the agency head denied his request for qualification of the grievance for hearing. The grievant appealed the agency head's denial to this Department. On August 5, 2002, this Department issued a ruling, which also denied qualification of the grievance for hearing. On August 23, 2002, the grievant notified the agency's human resource department that he wished to appeal this Department's qualification ruling to the circuit court. On August 30, 2002, the agency notified the grievant that his grievance had been closed due to his failure to initiate the appeal within the five workday time period.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.¹ That process assures that the parties first communicate with each other about the noncompliance, and resolve any compliance problems voluntarily, without this Department's involvement. Specifically, the party

¹ *Grievance Procedure Manual*, § 6, pages 16-18.

claiming noncompliance must notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance.² If the grievant is the noncompliant party and fails to correct the alleged noncompliance, this Department has long held that the agency may administratively close the grievance by notifying the grievant in writing that (i) the grievance has been administratively closed, and (ii) the grievant may challenge the closing of his grievance by requesting a compliance ruling from this Department. If the grievant requests a ruling and this Department finds that there was just cause for the grievant's failure to advance the grievance after receiving written notice from the agency (e.g., grievant's physical or mental incapacity), this Department may order that the grievance be reopened.

A ruling on this issue is premature in this case because the agency has not notified the grievant in writing of the alleged procedural violation, as required by the grievance procedure. Moreover, the grievant has corrected any noncompliance by notifying the agency of his intention to appeal, thus rendering the issue of any purported noncompliance moot. Accordingly, the agency's human resources department is directed to forward the grievance record to the circuit court in the jurisdiction in which the grievance arose within 5 workdays of receipt of this decision. This compliance ruling is consistent with others issued by this Department in comparable situations,³ and is final and nonappealable.⁴

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Director

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² *Grievance Procedure Manual*, § 6.3, page 17.

³ See Department of Employment Dispute Resolution (EDR) Ruling No. 2002-170.

⁴ Va. Code § 2.2-1001(5).