

Issue: Compliance/5-day rule; Ruling date: September 4, 2003; Ruling #2003-146;
Agency: Department of Veteran's Services; Outcome: grievant in compliance



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Veteran's Services
Ruling Number 2003-146
September 4, 2003

The grievant has requested a compliance ruling regarding her April 23, 2003 grievance with the Department of Veteran's Services (DVS). The agency asserts that the grievant did not advance her grievance for a qualification determination within the required time period.

FACTS

The grievant is employed as a Veteran's Service Representative. On March 24, 2003, she was issued a Group II Written Notice for failure to follow a supervisor's instructions. On April 23, she initiated a grievance to challenge the disciplinary action. The grievance proceeded through the respondent steps without resolution and on June 24, 2003, the grievant was issued the third-step response. On July 3, the grievant requested qualification of her grievance for a hearing. On July 10, 2003, the agency head notified the grievant that she was out of compliance with the grievance procedure for failing to advance her grievance for a qualification determination within the required five workday time period, and therefore, her request for qualification was denied.¹

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 this Department'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. 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 (i) that the grievance has been administratively closed, and (ii) that the grievant may

¹ *Grievance Procedure Manual*, § 3.1, page 8.

² *Grievance Procedure Manual*, § 6, pages 16-18.

challenge the closing of her grievance by requesting a compliance ruling from this Department.³

Here, the facts reflect that the grievant works a modified four-work day schedule with Wednesday of each week as her off day. Based upon this schedule, the grievant's response of July 3, 2003 was within the required five workday time period of the grievance procedure, and therefore timely. Further, even had the grievant not been timely, the agency did not provide notice that she was in non-compliance for failing to take action to either close or advance her grievance within the required five workday time period. Accordingly, by copy of this ruling, the agency is directed, within five workdays of receipt of this ruling, to render a qualification determination. This Department's rulings on compliance are final and nonappealable.⁴

Claudia T. Farr
Director

June M. Foy
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³ *Grievance Procedure Manual*, § 6.3, page 17.

⁴ Va. Code § 2.2-1001 (5).