

Issue: Compliance/second-step respondent; Ruling Date: December 15, 2004; Ruling #2004-912; Agency: Virginia Commonwealth University; Outcome: issue has been cured; grievant has five days to advance grievance.



*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*

COMPLIANCE RULING OF DIRECTOR

In the matter of Virginia Commonwealth University  
Ruling Number 2004-912  
December 15, 2004

The grievant requests a compliance ruling in his October 15, 2004 grievance with Virginia Commonwealth University (VCU or the agency). The grievant asserts that the first step-respondent twice returned the grievant's October 15, 2004 grievance to the grievant without a response.

FACTS

The grievant is employed as a Housekeeping and Apparel Service Worker I with VCU. On October 15, 2004, the grievant attempted to initiate his grievance with the designated first step-respondent. The first step-respondent, a new and probationary employee, was unsure whether he was authorized to accept and respond to the grievance and as such, declined to accept the grievance until he spoke with upper management.

On October 19, 2004, after learning that he did in fact have the authority to respond to the October 15<sup>th</sup> grievance, the first step-respondent allegedly advised the grievant that he would accept and respond to the grievance if provided and asked to meet with the grievant later during the work shift. The first step-respondent claims that in response, the grievant stated that he needed to leave upon completion of his duties because he was ill. The grievant, on the other hand, asserts that he mailed his grievance to the first step-respondent on October 19, 2004 and that the grievance was again returned to him unanswered. On November 4, 2004, the grievant sent a letter of noncompliance to the agency head for the first step-respondent's failure to accept his grievance. The agency received the notice of noncompliance on November 11, 2004 and responded to the notice by letter dated November 16, 2004. The agency's response claimed that it did not have the October 15<sup>th</sup> grievance and advised the grievant to present the grievance to the first step-respondent again. On November 19, 2004, the grievant forwarded his grievance to the first step-respondent. The agency claims to have received the grievance on November 23, 2004, the same date that the grievant sent his request for a compliance ruling to this Department. The first step-respondent responded to the October 15<sup>th</sup> grievance on December 1, 2004. The grievance and attached first step response were allegedly received by the grievant on December 3, 2004.

### DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>1</sup> 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.<sup>2</sup> For example, if the grievant believes that an agency has inappropriately refused to accept his grievance (as the grievant believed in this case), a grievant must notify the agency head of the alleged noncompliance.

Before seeking a compliance ruling from this Department, the grievant must allow the agency five workdays after receipt of the written notice to correct any noncompliance. If after five workdays the grievant believes that the agency has failed to correct the alleged noncompliance, the grievant may request a ruling from this Department. Furthermore, should this Department find that the agency violated a substantial procedural requirement and that the grievance presents a qualifiable issue, this Department may resolve the grievance in the grievant's favor unless the agency can establish just cause for its noncompliance.<sup>3</sup>

In the present case, the grievant challenges his immediate supervisor's refusal to accept and respond to his October 15, 2004 grievance as a violation of the grievance procedure. Under the grievance procedure, "[a]s a general rule, an employee must initiate a grievance with the first step-respondent, who is generally his immediate supervisor."<sup>4</sup> In turn, the first step-respondent must accept the grievance, enter the date of receipt on the Form A, and notify the agency's human resource office of the grievance.<sup>5</sup> Additionally, within 5 workdays of receipt of the grievance, the first step-respondent must provide a written response on the Form A or an attachment.<sup>6</sup>

Here, it is undisputed that the first step-respondent, the grievant's immediate supervisor, incorrectly failed to accept the grievance on October 15<sup>th</sup>. As such, VCU has failed to comply with the grievance procedure requirements set forth above. However, while this Department does not condone VCU's noncompliance, in this case, it responded to the grievant's written notice of noncompliance, and any harm that may have accrued to the grievant as a result of the agency's initial failure to accept the grievance has been cured by its subsequent acceptance and first management resolution step-response dated

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<sup>1</sup> *Grievance Procedure Manual* § 6.1.

<sup>2</sup> *Grievance Procedure Manual* § 6.3. In a case where the agency is purportedly out of compliance, the notification of noncompliance is directed to the agency head.

<sup>3</sup> *Id.*

<sup>4</sup> *See Grievance Procedure Manual* § 2.4.

<sup>5</sup> *Grievance Procedure Manual* § 3.

<sup>6</sup> *Id.*

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December 1, 2004. As such, the issue to which the grievant now objects has essentially been cured (corrected). Most importantly, the grievant has not cited to any prejudice suffered as a result of the agency noncompliance. Accordingly, within 5 workdays of receipt of this ruling, the grievant must notify the agency whether he wishes to conclude his October 15, 2004 grievance or advance it to the second resolution step. This ruling does not make a determination about the merits of the October 15, 2004 grievance, only that it is now in compliance with the grievance procedure. This Department's rulings on matters of compliance are final and nonappealable.<sup>7</sup>

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Director

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<sup>7</sup> Va. Code § 2.2-3003(G).