

Issue: Compliance/Resolution steps of the grievance procedure; Ruling Date: January 20, 2005; Ruling #2004-913; Agency: Virginia Commonwealth University; Outcome: agency in compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Virginia Commonwealth University
Ruling Number 2004-913
January 20, 2005

The grievant requests a compliance ruling in his October 18, 2004 grievance with Virginia Commonwealth University (VCU or the agency).¹ The grievant asserts that the first step-respondent returned his October 18, 2004 grievance to him without a response.

FACTS

The grievant is employed as a Housekeeping and Apparel Service Worker I with VCU. The grievant alleges that he mailed his grievance to the designated first step-respondent on October 19, 2004. According to the grievant, the grievance was returned unanswered. As such, on November 4, 2004, the grievant sent a letter of noncompliance to the agency head for the first step-respondent's failure to accept and respond to his grievance.

The agency received the notice of noncompliance on November 11, 2004 and responded to the notice by letter dated November 17, 2004. The agency's response claimed that it never received a grievance from the grievant and if he wished to proceed with initiating the grievance he should present it to the first step-respondent. On November 19, 2004, the grievant forwarded his grievance to the first step-respondent. The first step-respondent claims to have received the grievance on November 23, 2004 and responded to it on November 29, 2004. The grievance and attached first step response were allegedly received by the grievant on November 30, 2004.

DISCUSSION

¹ It should be noted that this Department received two compliance ruling requests from the grievant. The first is dated November 23, 2004 and was received by this Department on November 29, 2004. The second similar request is dated December 3, 2004 and was received by this Department on December 6, 2004. Both requests allege that the first step respondent refuses to respond to the October 19, 2004 grievance. According to Form A of the October 18, 2004 grievance however, the grievant received a response from the first step respondent on November 30, 2004. Accordingly, the grievant's December 3rd request will not be considered in this ruling.

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.³ 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.⁴

In the present case, the grievant challenges his immediate supervisor's alleged refusal to accept and respond to his October 18, 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."⁵ 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.⁶ 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.⁷

It is in dispute whether the grievant presented his grievance to the first step-respondent prior to November 19, 2004. However, even if this Department were to assume that the grievant did in fact present the grievance to the agency as alleged, the agency has responded and as such, the issue to which the grievant now objects has essentially been corrected. Most importantly, the grievant has not cited to any prejudice suffered as a result of the alleged noncompliance. Accordingly, within 5 workdays of receipt of this ruling, the grievant must notify the agency that he wishes to either conclude his October 18, 2004 grievance or advance it to the second resolution step.⁸

² *Grievance Procedure Manual* § 6.1.

³ *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.

⁴ *Id.*

⁵ *See Grievance Procedure Manual* § 2.4.

⁶ *Grievance Procedure Manual* § 3.

⁷ *Id.*

⁸ It should be noted that on December 8, 2004, the agency sent the grievant a notice of noncompliance for failure to advance his grievance to the second management resolution step within the mandated 5 workdays. Under the grievance procedure, however a compliance ruling request to this Department

This grievance does not make a determination about the merits of the October 18, 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.⁹

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generally stops the grievance process until this Department's compliance decision is rendered. *See Grievance Procedure Manual* § 6.1. As such, in this case, the grievance process stopped when the grievant requested a compliance ruling from this Department on November 23, 2004. **[TAB 1]**

⁹ Va. Code § 2.2-3003(G).