

Issue: Compliance/5 day rule; Ruling Date: March 23, 2005; Ruling #2005-980;
Agency: State Board of Elections; Outcome: grievant directed to advance or conclude
within 5 days.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of State Board of Elections
Ruling Number 2005-980
March 23, 2005

The State Board of Elections (or “the agency”) requests a compliance ruling in the grievant’s September 2, 2004 and October 29, 2004 grievances. The agency seeks permission to administratively close these grievances as a result of the grievant’s failure to comply with EDR’s ruling of February 9, 2005.

FACTS

In a ruling dated February 9, 2005, this Department ordered the parties to take action on the grievant’s September 2, 2004 and October 29, 2004 grievances within 10 calendar days of the date of the ruling (i.e., by February 19, 2005). The agency complied with the February 9th ruling directives. The grievant did not comply within the allotted time period, and as a result, on February 24, 2005, the agency sought a ruling allowing the agency to administratively close the September 2nd and October 29th grievances.

DISCUSSION

In responding to the agency’s February 24, 2005 request for a ruling, the investigating EDR Consultant discovered that due to EDR’s error with respect to the grievant’s new mailing address, the grievant did not receive EDR’s February 9th ruling until March 1, 2005, and thus could not have possibly complied with the order to take action by February 19th. Due to that error, we do not believe that a ruling on administrative closure is appropriate at this time.

The grievant has confirmed with the investigating Consultant that she now has a copy of the February 9th ruling, a copy of the September 2nd grievance, and a copy of the October 29th grievance. The grievant is directed to indicate on the two Form As her desire to either advance or conclude the September 2nd and October 29th grievances and to mail the two Form As to the agency within **5 calendar days** from her receipt of this ruling. If timeliness is challenged by the agency, it will be the grievant’s responsibility to establish that she mailed the two Form As within 5 calendar days from her receipt of this ruling. Accordingly, the grievant is advised to mail the grievances to the agency in a way that the mail date can be verified (e.g., certified mail).

CONCLUSION

If the grievant fails to comply with the directives in this ruling, the agency may renew its request to administratively close the two grievances. The grievant should be aware that if she fails to advance or conclude her grievances within the allotted 5 calendar days without just cause, this Department will grant any subsequent agency requests to administratively close these grievances.

If the parties have any questions, they may contact EDR's toll-free AdviceLine at 1-888-232-3842.

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