

Issue: Compliance/Grievance Procedure/5-day rule; Ruling Date: November 28, 2005; Ruling Date: November 28, 2005; Agency: Virginia Department of Transportation; Outcome: grievant directed to correct non-compliance or agency may administratively close grievance.



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

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Transportation  
Ruling Number 2006-1185  
November 28, 2005

The Department of Transportation (VDOT or the agency) has requested a compliance ruling in the grievant's September 15, 2004 grievance. The agency alleges that the grievant has failed to comply with the time limits set forth in the grievance procedure for advancing or concluding her grievance.

FACTS

The grievant was employed by the agency as an Administrative and Program Specialist III. On August 16, 2004, the grievant received a Group II Written Notice for allegedly failing to follow her supervisor's instructions. On September 15, 2004, the grievant initiated a grievance challenging the agency's actions. The agency states that on October 29, 2004, the third step respondent returned the grievance package to the grievant with his response; and that several months passed during which the grievant did not advance her grievance.

The agency asserts that on September 1, 2005, it informed the grievant that she was out of compliance with the grievance procedure. On September 29, 2005, the agency again informed the grievant that she was out of compliance with the grievance procedure. The agency states that despite the notice of noncompliance, to date the grievant has failed to advance or conclude her grievance, and it asks this Department to allow the grievance to be administratively closed.

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 (EDR'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> If the opposing party fails to correct the noncompliance within this five-day period, the party claiming noncompliance may seek a compliance ruling from the EDR Director, who may in turn order the party to correct the noncompliance or, in cases of substantial noncompliance, render a decision against the noncomplying party on any qualifiable issue.

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<sup>1</sup> *Grievance Procedure Manual*, § 6.3.

<sup>2</sup> *Grievance Procedure Manual*, § 6.3.

When an EDR ruling finds that either party to a grievance is in noncompliance, the ruling will (i) order the noncomplying party to correct its noncompliance within a specified time period, and (ii) provide that if the noncompliance is not timely corrected, a decision in favor of the other party will be rendered on any qualifiable issue, unless the noncomplying party can show just cause for its delay in conforming to EDR's order.<sup>3</sup>

In this case, the grievant failed to advance or conclude her September 15, 2004 grievance within five workdays of receiving the third-step response. The agency notified the grievant of her noncompliance on two occasions but the grievant has apparently not subsequently advanced or concluded her grievance.

As the grievant has failed to advance or conclude her grievance in a timely manner, she has failed to comply with the grievance procedure. This Department therefore orders the grievant to correct her noncompliance within ten workdays of the date of this ruling by either concluding her grievance or advancing her grievance to the qualification stage. If she does not, the agency may administratively close her grievance without any further action on its part. The grievance may be reopened only upon a timely showing by the grievant of just cause for the delay (for example, a serious illness, or other circumstances beyond the grievant's control).

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Claudia T. Farr  
Director

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William G. Anderson, Jr.  
EDR Consultant, Sr.

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<sup>3</sup> While in cases of substantial noncompliance with procedural rules the grievance statutes grant the EDR Director the authority to render a decision on a qualifiable issue against a noncompliant party, this Department favors having grievances decided on the merits rather than procedural violations. Thus, the EDR Director will *typically* order noncompliance corrected before rendering a decision against a noncompliant party. However, where a party's noncompliance appears driven by bad faith or a gross disregard of the grievance procedure, this Department will exercise its authority to rule against the party without first ordering the noncompliance to be corrected.