

Issue: Compliance/5 day rule; Ruling Date: January 20, 2006; Ruling #2006-1252;
Agency: Virginia Department of Transportation; Outcome: grievant ordered to respond
within 10 days from receipt of ruling; agency may administratively close if no response



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Transportation
Ruling No. 2006-1252
January 20, 2006

The Department of Transportation (VDOT or the agency) seeks to administratively close the grievant's August 24, 2005 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 is employed by the agency as a Traffic Controller. On August 24, 2005, the grievant initiated a grievance challenging the 2.7% in-band adjustment she received as inadequate given her education, training and accomplishments. On November 17, 2005, the third step-respondent issued a written response to the grievance and attached it to Form A. The agency claims that the original third step-response and Form A was sent to the grievant on November 18, 2005 via certified mail and a copy was sent regular U.S. Mail First Class. According to the agency, the certified mail package containing the third step-response was unclaimed by the grievant and ultimately returned to the agency.

On December 21, 2005, the agency sent the grievant a written notice of noncompliance by certified mail and regular U.S. Mail First Class. The U.S. Post Office attempted to deliver the certified mail package on December 22, 2005 and a notice was left for the grievant regarding the letter. As of January 5, 2006, the grievant had failed to claim the certified mailing containing the notice of noncompliance. The agency asserts that despite the grievant's failure to claim the certified letter, she presumably received the notice of noncompliance that was sent via regular U.S. mail but to date has failed to advance or conclude her grievance. Accordingly, the agency 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.¹ 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

¹ *Grievance Procedure Manual*, § 6.3.

party claiming noncompliance must notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance.² 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. 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.³

In this case, the grievant failed to advance or conclude her August 24, 2005 grievance within five work days of receiving the third management resolution step response. Moreover, the agency appears to have notified the grievant of her noncompliance, but the grievant has not 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 work days of the date of this ruling** by either concluding her grievance or advancing her grievance to the second management resolution step. 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).

This Department's rulings on matters of compliance are final and nonappealable.⁴

Claudia T. Farr
Director

Jennifer S.C. Alger
EDR Consultant

² *Id.*

³ 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.

⁴ *See* Va. Code § 2.2-1001(5).