

Issue: Compliance/Grievance Procedure/5-day rule; Ruling Date: March 10, 2006;  
Ruling #2006-1293; Agency: Department of Transportation; Outcome: grievance not in  
compliance



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

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Transportation  
Ruling No. 2006-1293  
March 10, 2006

The Department of Transportation (VDOT or the agency) seeks to administratively close the grievant's October 26, 2005 grievance.

FACTS

The grievant is employed as a Transportation Operator II with VDOT. The grievant alleges that he was offered a 10% increase in salary for accepting a new position, but that he was subsequently informed that the increase was retracted. On October 26, 2005, the grievant initiated a grievance challenging the alleged retraction. After the parties failed to resolve the grievance during the management steps, the grievant requested qualification of his grievance for hearing. By letter dated December 7, 2005, the agency head (through his designee) denied the grievant's request. The agency states that the grievant received the certified mail package containing the agency head's decision on January 5, 2006.

The agency asserts that on January 24, 2006, after the grievant had failed to appeal the denial of qualification to EDR or conclude his grievance, it sent the grievant a letter of noncompliance by regular and certified mail. This letter advised the grievant that he had five workdays from his receipt of the letter to notify the agency whether he wanted either to conclude his grievance or appeal the qualification decision. According to a United States Postal Service tracking receipt produced by the agency, the January 24<sup>th</sup> letter was delivered to the grievant on February 7, 2006.

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

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

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. 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 his October 26, 2005 grievance within five work days of receiving the agency head's denial of his request for qualification.<sup>4</sup> Moreover, after receiving the agency's letter of noncompliance on February 7, 2006, the grievant has apparently failed to take any action regarding his grievance.

This Department therefore orders the grievant to either conclude his grievance or advance his grievance **within ten work days of the date of this ruling**. If he does not, the agency may administratively close his 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. This Department's rulings on matters of compliance are final and nonappealable.<sup>5</sup>

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Claudia T. Farr  
Director

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EDR Consultant

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<sup>2</sup> *Id.*

<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.

<sup>4</sup> See *Grievance Procedure Manual* § 4.3.

<sup>5</sup> See Va. Code § 2.2-1001(5).

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