

Issue: Compliance/5-day rule; Ruling Date: March 31, 2006; Ruling #2006-1313;
Agency: Virginia Department of Transportation; Outcome: grievant out of compliance



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Transportation
Ruling No. 2006-1313
March 31, 2006

The Department of Transportation (VDOT or the agency) seeks to administratively close the grievant's November 21, 2005 grievance.¹

FACTS

The grievant is employed with VDOT as an Administrative Office Specialist III. On November 21, 2005, the grievant initiated a grievance challenging the alleged reassignment of her responsibility as a civil rights representative. After the parties failed to resolve the grievance during the management resolution steps, the grievant requested qualification of her grievance for hearing. On January 31, 2006, the grievant was notified by mail that the agency head had not qualified her grievance. The agency states that the grievant received the certified mail package containing the agency head's decision on February 8, 2006.

The agency asserts that on February 23, 2006, after the grievant had failed to appeal the denial of qualification to EDR or conclude her grievance, it sent the grievant a letter of noncompliance by regular and certified mail. This letter advised the grievant that she had five workdays from her receipt of the letter to notify the agency whether she wanted either to conclude her grievance or appeal the qualification decision. The agency states that according to the U.S. Postal Service tracking system, the February 23rd letter was delivered to the grievant on March 3, 2006.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.² That process assures that the parties first

¹ The Grievance Form A identifies November 21, 2005 as the date on which the grievance was initiated. The agency states that the grievance was in fact initiated on November 11, 2005. As the date on which the grievance was initiated does not affect the outcome of this ruling, we need not resolve this factual issue, but will adopt, for purposes of this ruling only, November 21, 2005 as the date of initiation.

² *Grievance Procedure Manual*, § 6.3.

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.³ 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.⁴

In this case, the grievant failed to advance or conclude her November 21, 2005 grievance within five work days of receiving the agency head's denial of her request for qualification.⁵ Moreover, after receiving the agency's letter of noncompliance on March 3, 2006, the grievant has apparently failed to take any action regarding her grievance.

This Department therefore orders the grievant to either conclude or advance her grievance **within ten work days of the date of this ruling**. 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. This Department's rulings on matters of compliance are final and nonappealable.⁶

Claudia T. Farr
Director

Gretchen M. White
EDR Consultant

³ *Id.*

⁴ 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.

⁵ See *Grievance Procedure Manual* § 4.3.

⁶ See Va. Code § 2.2-1001(5).

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