

Issue: Compliance/5 day rule; Ruling Date: April 12, 2006; Ruling #2006-1329;
Agency: Virginia Department of Transportation; Outcome: EDR orders grievant to
correct his noncompliance in 10 days.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Transportation
Ruling No. 2006-1329
April 12, 2006

The Department of Transportation (VDOT or the agency) seeks to administratively close the grievant's September 15, 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 his grievance.

FACTS

The grievant was employed by the agency as a Transportation Operations Manager II. On August 19, 2005, the grievant was presented with a Group I Written Notice because he "Failed to inform employee of VDOT policies on the use of State equipment for personal use and obtaining discarded VDOT Material." On September 15, 2005 the grievant challenged the Written Notice by initiating a grievance.

The grievance advanced through the management resolution steps and on February 16, 2006, the grievant was sent the third-step response to his grievance. On March 7, 2006, the agency sent the grievant a letter informing him that due to his failure to advance his grievance after the third step, he was out of compliance with the grievance procedure. On March 31, 2006, the agency requested that this Department allow the agency to close the grievance.

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 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 workday 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

¹ *Grievance Procedure Manual*, § 6.3.

² *Id.*

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 has failed to advance or conclude his grievance within five workdays of receiving the third management resolution step response. Moreover, the agency appears to have notified the grievant of his noncompliance, but the grievant has not advanced or concluded his grievance.

As the grievant has failed to advance or conclude his grievance in a timely manner, he has failed to comply with the grievance procedure. This Department therefore orders the grievant to correct his noncompliance **within ten workdays of the date of this ruling** by either concluding his grievance or requesting that the agency head qualify his grievance. 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 (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

William G. Anderson, Jr.
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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).