

Issue: Compliance/agency claims grievant has failed to advance grievance; Ruling Date: June 1, 2006; Ruling #2006-1343; Agency: Virginia Department of Transportation; Outcome: grievant has 10 days from date of ruling to advance grievance; if no, agency is clear to close.



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

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Transportation  
Ruling No. 2006-1343  
June 1, 2006

The Department of Transportation (VDOT or the agency) seeks to administratively close the grievant's February 21, 2006 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 an Engineering Tech III. On February 2, 2006, the grievant was issued two Group II Written Notices, and he was terminated from employment. On February 21, 2006, the grievant initiated a grievance under the expedited grievance procedure.

The agency states that on March 24, 2006, the second-step respondent sent his response to the grievant by e-mail and certified mail. The agency asserts that after the grievant subsequently failed either to advance or conclude his grievance, the second-step respondent left the grievance a voice mail message during the week of April 3, 2006, asking if the grievance had been returned to the agency by regular mail. The agency states that the grievant did not respond to this message.

On April 10, 2006, the agency sent the grievant a letter by certified mail informing him that due to his failure to advance his grievance, he was out of compliance with the grievance procedure. The agency states that United States Postal Service records indicate the letter was received by the grievant on April 17, 2006, but that the grievant has not acted to advance or conclude his grievance. On April 27, 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.<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

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

workdays for the opposing party to correct any noncompliance.<sup>2</sup> 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 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 has failed to advance or conclude his grievance within five workdays of receiving the second 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.<sup>4</sup>

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Claudia T. Farr  
Director

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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* Va. Code § 2.2-1001(5).