

Issue: Compliance/agency claims grievant has failed to advance grievance; Ruling Date: May 25, 2006; Ruling #2006-1351; Agency: Virginia Department of Transportation; Outcome: grievant must respond within 10 days of ruling date; if no response 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. 2006-1351
May 25, 2006

The Department of Transportation (VDOT or the agency) seeks to administratively close the grievant's January 26, 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 is employed by the agency as an equipment operator. On January 26, 2006 the grievant initiated a grievance challenging a "Letter of Understanding" (counseling memorandum) he was issued on December 15, 2005 for his purported failure to show up for work on December 3, 2005 and arriving late on December 9, 2005. On or about April 3, 2006, the agency head's qualification decision was sent to the grievant. Because the grievant never advanced or concluded his grievance within 5-days of receiving the qualification response, the agency sent the grievant a notice of non-compliance via certified mail and U.S. Mail, first class on April 18, 2006. According to the United States Postal Services (USPS) tracking services, the USPS attempted to deliver the non-compliance letter to the grievant's home address on April 22, 2006 and again on May 16, 2006 and left notices reflecting the attempted deliveries. Because more than five days have elapsed since the attempted delivery of the certified letter and the presumed delivery of the first class letter, and the grievant has not yet cured the non-compliance, the agency seeks a compliance ruling.

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-day period, the party claiming noncompliance may seek a compliance ruling from the EDR Director, who may in turn

¹ *Grievance Procedure Manual*, § 6.3.

² *Id.*

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 has failed to advance or conclude his grievance within five work days of receiving the agency head's qualification decision. 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 work days of the date of this ruling** by either concluding his grievance or requesting that this Department 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).