

Issue: Compliance/5-day rule; Ruling Date: June 26, 2006; Ruling #2006-1372, Agency: Department of Motor Vehicles; Outcome: grievant is to come into compliance within ten days of the date of the ruling



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of Department of Motor Vehicles  
Ruling Number 2006-1372  
June 26, 2006

The Department of Motor Vehicles (DMV or agency) has requested permission to close a February 21, 2006 grievance.

**FACTS**

The grievant is a Manager at a Customer Service Center. The grievant initiated a grievance in which he asserts that as a result of his having raised staffing shortage concerns with his supervisor's supervisor, he was transferred to another facility. The agency asserted that the facts, as alleged in the grievance, do not qualify as retaliation as defined by the grievance procedure.

The grievant claims that the agency has violated a procedural requirement of the grievance procedure by requiring him to initiate his grievance with his immediate supervisor, who he alleges retaliated against him. In a May 10, 2006, EDR Ruling Number 2006-1299, this Department held that it was reasonable to allow the grievant to skip his immediate supervisor in this case. The Ruling instructed the immediate supervisor's supervisor to respond to the grievance within five workdays of receipt of EDR Ruling 2006-1299. The ruling further noted that because this grievance would be initiated beyond the second-step, the third-step respondent would preside over the fact-finding meeting that typically occurs at the second-step.<sup>1</sup>

According to the agency, it unsuccessfully attempted to contact the grievant several times to try to set up the second-step meeting. On May 22, 2006 the agency sent the grievant a certified letter requesting a response within 5-workdays. Three days later, the grievant phoned and left a message expressing his desire to continue with his grievance. The agency asserts that it returned the grievant's call within an hour, and that it requested that he call back. To date the grievant has not responded.

**DISCUSSION**

---

<sup>1</sup> *C.f. Grievance Procedure Manual* § 3.2, which provides that if the employee elects to waive the face-to-face meeting with the original second-step respondent, the employee must be allowed to meet with the third-step respondent.

In this case, it appears that both parties initially attempted to comply with this Department's May 10, 2006 Ruling. However, as the grievant has not attempted to contact the agency to set up the second-step meeting, he is now in noncompliance. This Department therefore orders the grievant to correct his noncompliance **within ten work days of the date of this ruling** by contacting the agency to arrange a date for the second-step meeting. 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>2</sup>

---

Claudia T. Farr  
Director

---

<sup>2</sup> See Va. Code § 2.2-1001(5).