

Issue: Compliance/grievance procedure/5-day rule; Ruling Date: March 26, 2007;
Ruling #2007-1562; Agency: Department of Transportation; Outcome: grievant not in
compliance



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Virginia Department of Transportation
Ruling No. 2007-1562
March 26, 2007

The Virginia Department of Transportation (the agency) seeks to administratively close the grievant's October 6, 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 her grievance.

FACTS

On October 6, 2006, the grievant initiated a grievance in which she challenged a Group II Written Notice. The grievance advanced through the management resolution steps and a copy of the grievance was presented to the grievant to indicate whether she desired to have the agency head qualify her grievance. When the grievant did not advance her grievance, the agency sent her a letter informing her that she was out of compliance. According to the grievant, she did not advance her grievance because the agency provided her with a copy of her grievance rather than the original. The grievant has since reported to this Department that she is unlikely to pursue her 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-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,

¹ *Grievance Procedure Manual* § 6.3.

² *Id.*

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 the delay in conforming to EDR's order.³

In this case, the grievant has failed to advance or conclude her grievance within five workdays of receiving the agency's third step response. Although it is understandable why she did not, given that she purportedly received a copy of her grievance rather than the original, the grievant now appears to have decided that she will not likely continue with her grievance.

If the grievant intends to continue with her grievance she must indicate so to the agency in writing **within ten workdays of the date of this ruling**.⁴ If the grievant does not respond **within ten workdays of the date of this ruling**, the agency may administratively close the 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.⁵

Claudia T. Farr
Director

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 The agency must then provide the grievant with the agency head's qualification decision on the original grievance form if it is available

⁵ See Va. Code § 2.2-1001(5).