

Issue: Compliance/Grievance Procedure/5-day rule; Ruling Date: April 6, 2007;
Ruling #2007-1583; Agency: Virginia 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. 2007-1583
April 6, 2007

The Virginia Department of Transportation (the agency) seeks to administratively close the grievant's September 27, 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

On September 27, 2006, the grievant initiated a grievance in which he asserted that he was being required to work in a hostile work environment. The grievance advanced through the management resolution steps and when the agency failed to qualify the grievance for hearing, the grievant asked this Department to do so. This Department declined to qualify the grievance and informed the grievant in a January 23, 2007 qualification ruling, that if the grievant wanted the circuit court to qualify his grievance for hearing, he needed to request qualification within five workdays of his receipt of the ruling.¹ After the grievant failed to advance his grievance, the agency sent the grievant a letter dated February 14, 2007, via certified and first class mail that he was out of compliance with the grievance procedure.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.² 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

¹ See EDR Ruling 2007-1528.

² *Grievance Procedure Manual* § 6.3.

workdays for the opposing party to correct any noncompliance.³ 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, 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.⁴

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 notifying his agency human resources office in writing that he wishes to either conclude his grievance or appeal this Department's qualification decision to circuit court. 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.⁵

Claudia T. Farr
Director

³ *Id.*

⁴ 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.

⁵ *See* Va. Code § 2.2-1001(5).