

Issue: Compliance: Grievance Procedure – 5 Day Rule: Ruling Date: May 8, 2007;
Ruling #2007-1650; Agency: Virginia Department of Health; Outcome: Grievant not
in compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Health
Ruling No. 2007-1650
May 8, 2007

The Department of Health (the agency) seeks to administratively close the grievant's December 18, 2006 and January 18, 2007 grievances. 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 grievances.

FACTS

Grievance 1

On December 18, 2006, the grievant initiated a grievance challenging a Group II Written Notice issued to her on November 30, 2006 (Grievance 1). The agency has provided evidence indicating that after the grievance proceeded through the first two management steps, the agency mailed the third resolution step response to the grievant on or about January 26, 2007, which was received at the grievant's address on January 31, 2007. However, the grievant has apparently failed to return the grievance package to the agency to advance or conclude the grievance.

Grievance 2

On January 18, 2007, the grievant initiated a grievance challenging a Group II Written Notice issued to her earlier that day. (Grievance 2). The agency has provided evidence indicating that after the grievance proceeded through the first management step, the agency sent via United Parcel Service (UPS) the second resolution step response to the grievant on or about January 26, 2007, which was received at the grievant's address on January 29, 2007. The grievant, however, has apparently failed to return the grievance package to the agency to advance or conclude the grievance.

According to evidence provided by the agency, because the grievant evidently has not advanced or concluded her grievances within five workdays of receiving agency

responses, the agency sent the grievant a notice of noncompliance via certified mail on March 15, 2007. According to the return receipt, the notice of noncompliance letter was received at the grievant's home address on March 26, 2007. Because more than five workdays have elapsed since the delivery of the notice of noncompliance letter, and the grievant has apparently not yet cured the noncompliance, 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 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.³

In this case, the grievant has evidently failed to advance or conclude Grievance 1 within five workdays of receiving the agency's third resolution step response. Likewise, the grievant has evidently failed to advance or conclude Grievance 2 within 5workdays of receiving the agency's second resolution step response. Moreover, the agency appears to have notified the grievant of her noncompliance, but the grievant has not advanced or concluded her grievances.

As the grievant has failed to advance or conclude her grievances in a timely manner, she has failed to comply with the grievance procedure. This Department therefore orders the grievant to correct her noncompliance **within ten workdays of the date of this ruling** by notifying her agency human resources office in writing that she wishes to either conclude Grievance 1 or request qualification of that grievance for a

¹ *Grievance Procedure Manual* § 6.3.

² *Id.*

³ 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, however, 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.

hearing. If she does not, 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).

Likewise, this Department orders the grievant to correct her noncompliance **within ten workdays of the date of this ruling** by notifying her agency human resources office in writing that she wishes to either conclude Grievance 2 or advance it to the third resolution step. Again, if the grievant does not, the agency may administratively close the grievance without any further action on its part and the grievance will be reopened only upon a timely showing by the grievant of just cause for the delay.

This Department's rulings on matters of compliance are final and nonappealable.⁴

Claudia T. Farr
Director

⁴ See Va. Code § 2.2-1001(5).