

Issue: Compliance: Grievance Procedure – 5 day rule; Ruling Date: May 7, 2007; Ruling #2007-1667; Agency: Virginia Commonwealth University; Outcome: Grievant not in compliance



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Virginia Commonwealth University
Ruling No. 2007-1667
May 7, 2007

Virginia Commonwealth University (the University) seeks to administratively close the grievant's March 12, 2007 grievance. The University 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 March 12, 2007, the grievant initiated his grievance concerning an alleged hostile work environment. After proceeding through the management steps, the University mailed the agency head's decision to deny qualification for hearing to the grievant on April 5, 2007. However, the grievant has failed to return the grievance package to the University to advance or conclude the grievance. Because the grievant never advanced or concluded his grievance within five workdays of receiving the agency head's decision, the University mailed the grievant a notice of noncompliance on April 17, 2007.¹ Because more than five workdays have elapsed since the notice of noncompliance letter, and the grievant has not yet cured the noncompliance, the University seeks a compliance ruling.²

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.³ That process assures that the parties first communicate with each

¹ While no return receipt was provided by the University, the mailing of correspondence, properly addressed and stamped, raises a presumption of receipt of the correspondence by the addressee. *E.g.*, *Washington v. Anderson*, 236 Va. 316, 322, 373 S.E.2d 712, 715 (1988). However, if the grievant were to show that he did not receive this notification, for instance, because the grievant had moved, such facts will be taken into account as to whether good cause may exist for reopening the grievance should it be administratively closed.

² There is no indication that the University provided the grievant with a copy of its request for a compliance ruling, as is required by the grievance procedure. *Grievance Procedure Manual* § 6.3. Because this ruling will provide the grievant one last opportunity to advance or conclude his grievance, this error on the University's part is not fatal to their request. However, should the issue of reopening the grievance arise in the future, this failure will weigh against the University. This Department would caution all participants in the grievance process to be sure opposing parties are aware of ruling requests made to EDR by copying them on correspondence.

³ *Grievance Procedure Manual* § 6.3.

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.⁴ 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.⁵

In this case, the grievant has failed to advance or conclude his grievance within five workdays of receiving the agency head's denial of qualification for hearing. Moreover, the University appears to have notified the grievant of his noncompliance, but the grievant has not advanced or concluded the 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.⁶ This Department therefore orders the grievant to correct his noncompliance **within ten workdays of the date of this ruling** by notifying his University human resources office in writing that he wishes to either conclude the grievance or appeal the agency head's qualification decision to EDR. If he does not, the University 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.⁷

Claudia T. Farr
Director

⁴ *Id.*

⁵ 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.

⁶ See *Grievance Procedure Manual* § 4.3.

⁷ See Va. Code § 2.2-1001(5).