

Issue: Compliance: Grievance Procedure – 5 Day Rule; Ruling Date: June 20, 2007; Ruling #2007-1711; 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 Virginia Department of Health
Ruling No. 2007-1711
June 20, 2007

The Virginia Department of Health (VDH or the agency) seeks to administratively close the grievant's October 2, 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 2, 2006, the grievant initiated her grievance concerning a disciplinary Written Notice. According to the agency, during the second step meeting the parties reached a tentative resolution to her grievance. Following the meeting, the second step respondent sent the grievant a second step response which included the terms of their settlement agreement. According to documentation provided by the agency, the grievant received the step response on December 15, 2006. Because the grievant failed to return her grievance package to the agency advancing or concluding her grievance, the agency mailed the grievant a notice of noncompliance on April 28, 2007. Because more than five workdays have elapsed since the notice of noncompliance letter, and the grievant has 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

¹ *Grievance Procedure Manual* § 6.3.

² *Id.*

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 failed to advance or conclude her grievance within five workdays of receiving the second step response. Moreover, the agency appears to have notified the grievant of her noncompliance, but the grievant has not advanced or concluded her grievance.

As the grievant has failed to advance or conclude her grievance in a timely manner, she has failed to comply with the grievance procedure.⁴ 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 the grievance or advance her grievance to the third step. 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).

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 See *Grievance Procedure Manual* § 3.2.

⁵ See Va. Code § 2.2-1001(5).