

Issue: Compliance: Grievance Procedure -- 5 Day Rule; Ruling Date: June 20, 2007;
Ruling #2007-1714; Agency: Department of Mental Health, Mental Retardation and
Substance Abuse Services; Outcome: Grievant not in compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of Mental Health,
Mental Retardation and Substance Abuse Services
Ruling No. 2007-1714
June 20, 2007

The Department of Mental Health, Mental Retardation and Substance Abuse Services seeks to administratively close the grievant's March 15, 2007 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 March 15, 2007, the grievant initiated a grievance challenging her receipt of a Group II Written Notice for failure to follow supervisor's instructions regarding coming to work on time. On or about March 23, 2007, the grievant received the first management resolution step response. At the time of receipt of the first management resolution step response, the grievant was on leave due to personal illness and was not released to return to work until April 6, 2007. The grievant subsequently resigned from her position effective April 16, 2007.¹ However, because the grievant never advanced or concluded her grievance, on May 2, 2007, the agency sent to the grievant a notice of noncompliance via certified mail. Because more than five workdays have elapsed since the grievant's alleged receipt of the notice of noncompliance letter on May 4, 2007 and the grievant has not yet cured the non-compliance, the agency seeks a compliance ruling.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.² That process assures that the parties first

¹ It should be noted that the grievant's voluntary resignation does not effect her March 15, 2007 grievance as this Department has long held that any grievance initiated by an employee *prior* to the effective date of a voluntary resignation may, at the employee's option, continue through the grievance process, assuming it otherwise complied with the 30-day calendar rule. *See e.g.*, EDR Ruling #2006-1151.

² *Grievance Procedure Manual*, § 6.3.

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.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 its delay in conforming to EDR's order.⁴

In this case, the grievant has failed to advance or conclude her grievance within five work days of receiving the first management resolution 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. This Department therefore orders the grievant to correct her noncompliance **within ten work days of the date of this ruling** by either concluding her grievance or advancing it to the second management resolution 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 *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).