

Issue: Compliance/5- day rule; Ruling Date: August 10, 2006; Ruling #2007-1408, 2007-1412; Agency: Department of Health, Outcome: grievant out of compliance/grievant ordered to correct noncompliance within 10 days.



***COMMONWEALTH of VIRGINIA***  
***Department of Employment Dispute Resolution***

**COMPLIANCE RULING OF DIRECTOR**

In the matter of Department of Health  
Ruling No. 2007-1408 and 2007-1412  
August 10, 2006

The Department of Health (VDH or the agency) seeks to administratively close the grievant's February 27, 2006 and March 2, 2006 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**

Prior to her resignation, the grievant was employed by the agency as the Minority Health Manager. Before resigning from the VDH, the grievant initiated two grievances; one dated February 27, 2006 and one dated March 2, 2006. On or about May 5, 2006, the agency head denied the grievant qualification in both her February 27<sup>th</sup> and March 2<sup>nd</sup> grievances. By agreement of the parties, the grievant had until June 5<sup>th</sup> to either advance or conclude her grievances. Because the grievant never advanced or concluded her grievances within five days of the June 5<sup>th</sup> deadline, the agency sent the grievant a notice of non-compliance via certified mail on June 9, 2006. The United States Postal Services (USPS) attempted to deliver the non-compliance letter to the grievant's home address on June 13, 2006 and again on June 20, 2006 and appears to have left a notice reflecting the attempted deliveries. The letter was ultimately marked unclaimed by the USPS and returned to the agency on June 28, 2006. On July 6, 2006, the agency sent the notice of noncompliance letter to the grievant by regular U.S. Mail. Because more than five days have elapsed since the attempted delivery of the certified letter and the presumed delivery of the subsequent mailed letter, 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.<sup>1</sup> That process assures that the parties first

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<sup>1</sup> *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.<sup>2</sup> 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.<sup>3</sup>

In this case, the grievant has failed to advance or conclude her February 27<sup>th</sup> and March 2<sup>nd</sup> grievances within five work days of June 5, 2006; the agreed upon deadline for a response on the part of the grievant. 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 work days of the date of this ruling** by notifying her agency human resources office that she wishes to either conclude her grievances or in the alternative, appeal the agency head's denial of qualification in both grievances to this Department. If she does not, the agency may administratively close both the February 27<sup>th</sup> and March 2<sup>nd</sup> grievances without any further action on its part. The grievances 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.<sup>4</sup>

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Claudia T. Farr  
Director

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<sup>2</sup> *Id.*

<sup>3</sup> 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.

<sup>4</sup> *See* Va. Code § 2.2-1001(5).

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