

Issue: Compliance/5-day rule of grievance procedure; Ruling Date: July 14, 2006;
Ruling #2006-1396; Agency: Department of Professional and Occupational Regulation;
Outcome: grievant out of compliance; ruling orders grievant to correct non-compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Professional and Occupational Regulation
Ruling No. 2007-1396
July 14, 2006

The Department of Professional and Occupational Regulation (DPOR or the agency) seeks to administratively close the grievant's May 12, 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

The grievant is employed as an Investigator at DPOR. On May 12, 2006 the grievant initiated a grievance challenging a counseling memorandum she was issued on April 24, 2006. On or about June 9, 2006, the third management resolution step response was sent to the grievant. Because the grievant never advanced or concluded her grievance within 5-days of receiving the third management resolution step response, the agency hand-delivered to the grievant a notice of noncompliance on June 20, 2006.¹ Because more than five work days have elapsed since the alleged notice of noncompliance was allegedly hand delivered to the grievant, 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 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,

¹ According to the agency, the notice of noncompliance was in a sealed envelope and placed in the grievant's chair at work. The agency claims that the grievant was also verbally notified that the envelope had been placed in her chair.

² *Grievance Procedure Manual*, § 6.3.

³ *Id.*

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 third 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 requesting that the agency head qualify her grievance for hearing. If she does not, the agency may administratively close her 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

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).