

Issue: Compliance/5 day rule; Ruling Date: August 2, 2006; Ruling #2006-1404;  
Agency: Department of Health; Outcome: grievant out of compliance; ruling orders  
grievant to correct non-compliance with 10 work days.



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

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Health  
Ruling No. 2007-1404  
August 2, 2006

The Department of Health (VDH or the agency) seeks to administratively close the grievant's April 5, 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 with VDH as a Regional Coordinator. On April 5, 2006, the grievant initiated a grievance asserting that she was subject to discrimination on the basis of her gender and/or because of her religious beliefs or disbeliefs. After receiving the agency head's qualification denial on June 9, 2006, the grievant did not advance or conclude her grievance within five days of receiving the qualification decision. Accordingly, the agency sent the grievant a notice of non-compliance via certified return receipt mail on June 22, 2006, which, according to the return receipt, was delivered to the grievant's home address on June 27, 2006. Because more than five days have elapsed since the delivery of the certified letter and the presumed delivery of the first class 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 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

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<sup>1</sup> *Grievance Procedure Manual*, § 6.3.

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

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 grievance within five work days of receiving the agency head's qualification decision. 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 notifying her agency human resources office in writing that she wishes to either conclude her grievance or appeal the agency head's qualification decision to this Department. 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.<sup>4</sup>

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Claudia T. Farr  
Director

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<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).