

Issue: Compliance/Grievance Procedure/5-day rule; Ruling Date: September 27, 2006;
Ruling #2007-1435; Agency: Department of Transportation; Outcome: grievant not in
compliance – grievant ordered to correct non-compliance



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Transportation
Ruling No. 2007-1435
September 27, 2006

The Department of Transportation (VDOT or the agency) seeks to administratively close the grievant's July 28, 2005 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 a Bridge Tunnel Patroller (BTP) with VDOT. Several of the grievant's co-workers received an in-band adjustment to their salaries effective August 25, 2005. The grievant did not receive a similar salary adjustment. Accordingly, on July 28, 2005, the grievant initiated a grievance challenging the agency's decision.

When the agency head declined to qualify the grievance for hearing, the grievant requested that this Department grant her a hearing. This Department also denied qualification in a July 10, 2006 ruling. The ruling and the "Important Information" attachment instructed that within 5-workdays of receipt of the ruling the grievant should either (1) seek qualification from the circuit court, or (2) close her grievance. Because the grievant never advanced or concluded her grievance within five days of the presumed receipt of the July 10th EDR ruling, the agency sent the grievant a notice of non-compliance via first class *and* certified mail on August 11, 2006. The United States Postal Services (USPS) attempted to deliver the non-compliance letter to the grievant's home address on August 14, 2006. The letter was returned unclaimed to the agency on September 5, 2006. Because more than five days have elapsed since the presumed delivery of the August 11, 2006 first class 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 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.³

In this case, the grievant failed to conclude her grievance or seek qualification within five work days of the presumed receipt of the July 10th EDR Ruling. 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 that she wishes to either conclude her grievance or in the alternative, appeal this Department's denial of qualification. 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).

¹ *Grievance Procedure Manual*, § 6.3.

² *Id.*

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.

This Department's rulings on matters of compliance are final and nonappealable.⁴

Claudia T. Farr
Director

⁴ See Va. Code § 2.2-1001(5).