

Issue: Grievance procedure/5-day rule; Ruling Date: November 7, 2006; Ruling #2007-1463; Agency: Department of Transportation; Outcome: grievant in compliance



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of the Department of Transportation  
Ruling No. 2007-1463  
November 7, 2006

The Department of Transportation (VDOT or the agency) seeks to administratively close the grievant's July 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 his grievance.

**FACTS**

The grievant is employed as an Electronic Technician Sr. with VDOT. On July 12, 2006, the grievant initiated a grievance challenging a Group II Written Notice. On or about September 9, 2006, the second management resolution step response was sent to the grievant. Because the grievant never advanced or concluded his grievance within five work days of receiving the second management resolution step response, on September 26, 2006, the agency sent to the grievant a notice of noncompliance via certified and regular U.S. Mail. Because more than five work days have elapsed since the notice of noncompliance was received by 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.<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 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,

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

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

In this case, the grievant has failed to advance or conclude his grievance within five work days of receiving the second management resolution step response. However, the grievant asserts that he informed the agency that he no longer desired to continue with his grievance and that the agency should close it. Because the grievant has indicated that he no longer intends to pursue the July 12, 2006, grievance, the agency is now free to close it. 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).