

Issue: Compliance/5-day rule; Ruling Date: December 20, 2006; Ruling #2007-1502;
Agency: Virginia Department of Health; Outcome: grievant ordered to correct non-compliance within 10 days.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of Health
Ruling No. 2007-1502
December 20, 2006

The Virginia Department of Health (VDH or the agency) seeks to administratively close the grievant's July 27, 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 Administrative Office Specialist with VDH. On July 27, 2006, the grievant initiated a grievance challenging her non-selection for an Administrative Office Specialist position in another VDH office. Because the grievant never advanced or concluded her grievance within five work days of receiving the second management resolution step response, on October 2, 2006, the agency sent to the grievant, via certified mail return receipt requested, a notice of noncompliance with the grievance process. The October 2, 2006 letter went unclaimed by the grievant and was returned to the agency. The notice of noncompliance letter was sent to the grievant again, via regular U.S. mail, on October 27, 2006. Because more than five work days have elapsed since the notice of noncompliance was allegedly mailed 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.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

¹ *Grievance Procedure Manual*, § 6.3.

² *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. An agency may not, however, close an allegedly non-compliant grievance without first seeking a ruling from the EDR Director.³ Before seeking such a ruling, the agency must inform the grievant, in writing, of the noncompliance and allow the grievant 5 workdays after receipt of the written notice to correct the noncompliance.⁴ If the grievant does not correct the noncompliance within 5 workdays, then the agency may seek a compliance ruling from the EDR Director.⁵ If EDR finds that the grievant is out of compliance, EDR will order the grievant to correct the non-compliance.⁶ If it is not corrected within the designated timeframe, the agency may then close the grievance.⁷

In this case, the grievant has failed to advance or conclude her grievance within five work days of receiving the second 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 advancing her grievance to the third management resolution step. 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.⁸

Claudia T. Farr
Director

³ See Frequently Asked Grievance Question #29 on EDR's website at <http://www.edr.virginia.gov/faqs.htm>.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ See Va. Code § 2.2-1001(5).