

Issue: Compliance/Grievance Procedure/second-step meeting; Ruling Date: January 23, 2007; Ruling #2007-1525; Agency: Department of Corrections; Outcome: agency not in compliance



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Corrections
Ruling Number 2007-1525
January 23, 2007

The Department of Corrections (DOC or the agency) has requested that this Department (EDR) reconsider EDR Ruling No. 2007-1503 in which the EDR Director ordered the subject grievance qualified. For the following reasons, the qualification of this grievance for hearing will stand.

FACTS

On December 15, 2006, this Department issued EDR Ruling No. 2007-1503, which found that the agency was in noncompliance with the grievance procedure, the second such ruling on the same issue. The compliance matter concerns the second resolution step meeting. The agency offered to have an assistant warden meet with the grievant as the second-step respondent. The grievant sought a meeting with the appropriate second-step respondent, the chief warden of the facility, rather than another official designated by the warden. This Department ruled on that issue of noncompliance in EDR Ruling 2007-1484, dated November 21, 2006. In that ruling, the Director of EDR ordered the agency to have the chief warden of the facility meet face-to-face with the grievant within five workdays of receipt of the ruling. Because the agency had yet to comply with the order and have the warden meet with the grievant, in EDR Ruling No. 2007-1503 this Department ordered the grievance qualified for hearing and to proceed immediately to that stage, unless the grievant sought to continue with the management steps. The agency now asserts that it never received EDR Ruling No. 2007-1484, and requests that EDR reconsider Ruling No. 2007-1503.

DISCUSSION

The agency seeks reconsideration of EDR Ruling No. 2007-1503, reasoning that its noncompliance with EDR Ruling No. 2007-1484 should be excused, on the basis of its assertion that it never received a copy of Ruling No. 2007-1484. However, following our routine practice, a copy of Ruling 2007-1484 was sent to the agency via interagency mail on November 21, 2006. This Department generally assumes the normal operation of the mail and will presume delivery of its correspondence absent further evidence of non-

receipt.¹ For purposes of this ruling, the agency presents only its claim that it never received EDR Ruling No. 2007-1484. Because the agency has presented no other evidence, this Department must deny the request for reconsideration.

Moreover, this Department's practice is to provide both parties with written notice when a request for a ruling is received. Here, the agency received, and has admitted receiving, EDR's Notice of Receipt of Ruling Request for both EDR Ruling No. 2007-1484 and EDR Ruling No. 2007-1503.² Such correspondence places both parties on notice that a ruling is being considered in their case. The Notice also provides the opportunity for any party who may not have been aware of the ruling request to inquire about the basis of the request. In this case, the agency failed to avail itself of this opportunity.

When the agency received the Notice of Receipt of Ruling Request for EDR Ruling (with respect to Ruling No. 2007-1484), the agency was put on notice that this Department was considering the compliance matter concerning the second-step meeting asserted by the grievant. Consequently, when the agency received the second Notice of Receipt of Ruling Request for EDR Ruling (with respect to Ruling No. 2007-1503 in the same case), it should have inquired into the subject of that ruling request. Even assuming the agency never received EDR Ruling No. 2007-1484, at the time it received the Notice of Receipt of Ruling Request for EDR Ruling No. 2007-1503, the agency should have questioned why there was an additional ruling request in the same case. If EDR Ruling No. 2007-1484 had not yet been issued at that time, the grievance would have remained stayed.³

This Department cautions parties to the grievance procedure to make note of any Notice of Receipt of Ruling Request they receive. Parties receiving these Notices have the responsibility to determine for themselves the nature of the matters being considered by EDR. Failure to do so is at the party's own peril.

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

Claudia T. Farr
Director

¹ See, e.g., *Washington v. Anderson*, 236 Va. 316, 322, 373 S.E.2d 712, 715 (1988). Such evidence might include, for example, a letter from the mail carrier indicating lost mail, mail incorrectly routed due to a changed address, or other circumstance showing a deviation from normal operations.

² EDR's notice to DOC of the grievant's request for a ruling (which was issued as Ruling No. 2007-1503) was received by DOC on December 6, 2006, over a week before EDR issued Ruling No. 2007-1503 on December 15, 2006, which qualified the grievance for hearing.

³ *Grievance Procedure Manual* § 6.1 ("A [noncompliance] challenge to EDR will normally stop the grievance process temporarily. The grievance process will resume when EDR issues its ruling on the challenge.").

⁴ Va. Code § 2.2-3003(G).