

Issue: Compliance/grievance procedure/5-day rule; Ruling Date: February 15, 2007;
Ruling #2007-1544; Agency: Department of Mental Health, Mental Retardation and
Substance Abuse Services; Outcome: agency not in compliance



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of Mental Health, Mental Retardation
and Substance Abuse Services
Ruling No. 2007-1544
February 15, 2007

The grievant has requested a compliance ruling in his June 5, 2006 grievance with the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS or the agency). In particular, the grievant challenges the agency's administrative closure of his June 5th grievance.

FACTS

The grievant is employed as a Security Officer Supervisor with the agency. On June 5, 2006, the grievant initiated a grievance alleging misapplication and unfair application of policy and procedure, hostile and unsafe work environment and retaliation. The grievance proceeded through the management resolution steps and on September 1, 2006 the agency head denied the grievant's request for qualification for hearing. The grievant received the agency head's qualification determination on September 12, 2006. When the grievant failed to advance or conclude his grievance, the agency allegedly notified the grievant on September 21, 2006 that his June 5th grievance had been administratively closed.¹ On September 27, 2006, the grievant requested, via grievance Form A, that his grievance be advanced to EDR for a qualification determination.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.² 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

¹ The grievant claims that he was not notified of the closure of his grievance.

² *Grievance Procedure Manual*, § 6.3.

workdays for the opposing party to correct any noncompliance.³ 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. An agency may not, however, close an allegedly non-compliant grievance without first seeking a ruling from the EDR Director.⁴ 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.⁵ If the grievant does not correct the noncompliance within 5 workdays, then the agency may seek a compliance ruling from the EDR Director.⁶ If the EDR finds that the grievant is out of compliance, EDR will order the grievant to correct the non-compliance.⁷ If it is not corrected within the designated timeframe, the agency may then close the grievance.⁸

In this case, the grievant failed to advance or conclude his grievance within five work days of receiving the agency head's qualification determination. However, the agency did not notify the grievant of the noncompliance and give him five days to correct it before administratively closing his grievance. As such, this Department concludes that the agency inappropriately administratively closed the grievant's June 5, 2006, grievance. However, because the grievant has corrected any noncompliance by notifying the agency of his intention to appeal, thus rendering the issue of any purported noncompliance moot, the agency's human resources department is directed to forward the grievance record to this Department within 5 workdays of receipt of this decision. This compliance ruling is consistent with others issued by this Department in comparable situations,⁹ and is final and nonappealable.¹⁰

Claudia T. Farr
Director

³ *Id.*

⁴ *See* Frequently Asked Grievance Question #29 on EDR's website at <http://www.edr.virginia.gov/faqs.htm>.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *See* Department of Employment Dispute Resolution (EDR) Ruling Nos. 2002-170 and 2007-1512.

¹⁰ Va. Code § 2.2-1001(5).