

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date:
November 19, 2007; Ruling #2008-1859; Agency: Department of Health;
Outcome: Grievant Not in Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of Health
Ruling Nos. 2008-1859
November 19, 2007

The Department of Health (the agency) seeks a compliance ruling regarding a grievance initiated on June 22, 2007. 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

On June 22, 2007, the grievant initiated a grievance to challenge a Group III Written Notice and termination.¹ The grievance proceeded through the third management step and the grievant was sent the third resolution step response by certified mail on September 12, 2007, which according to information provided by the agency, he received on September 14th.² The agency asserts that the grievant has not advanced or concluded his grievance since that time, even after the agency reportedly sent the grievant a notice of noncompliance on October 9, 2007.³ The agency now requests a compliance ruling regarding the June 22nd grievance.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.⁴ 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 grievance appears to have been erroneously dated July 22, 2007.

² For instance, the agency provided this Department with copies of United States Postal Services documents indicating a September 14th delivery to the grievant.

³ The agency provided this Department with copies of United States Postal Services documents indicating an October 12th delivery to the grievant.

⁴ *Grievance Procedure Manual* § 6.3.

workdays for the opposing party to correct any noncompliance.⁵ 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 the delay in conforming to EDR's order.⁶

In this case, the grievant has failed to advance or conclude his grievance within five workdays of receiving the third step response. Moreover, the agency appears to have notified the grievant of his noncompliance, but the grievant still has not advanced or concluded the grievance.

As the grievant has failed to advance or conclude his grievance in a timely manner, he has failed to comply with the grievance procedure.⁷ This Department therefore orders the grievant to correct his noncompliance **within ten workdays of the date of this ruling** by notifying his agency human resources office in writing that he wishes to either conclude the grievance or request qualification of his grievance. If he 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).

This Department's rulings on matters of compliance are final and nonappealable.⁸

Claudia T. Farr
Director

⁵ *Id.*

⁶ 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.

⁷ See *Grievance Procedure Manual* § 3.3.

⁸ See Va. Code § 2.2-1001(5), 2.2-3003(G).