

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: November 7, 2007; Ruling #2008-1864; Agency: Department of Mental Health, Mental Retardation and Substance Abuse Services; Outcome: Agency Not in Compliance, Grievant 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. 2008-1864
November 7, 2007

The Department of Mental Health, Mental Retardation and Substance Abuse Services (the agency) seeks to administratively close the grievant's October 2, 2007 grievance.¹ 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

On October 2, 2007, the grievant initiated her grievance challenging the agency's disclosure of information about her work record, which was released in conjunction with an employment application. On October 9, 2007, the first step-response was mailed to the grievant. However, the grievant has failed to return the grievance package to the agency to advance or conclude the grievance. Because the grievant never advanced or concluded her grievance within five workdays of receiving the first step-response, the agency mailed the grievant a notice of noncompliance on October 17, 2007. According to letter tracking information available on the United States Postal Services website, the October 17th letter was delivered to the grievant on November 5, 2007.

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 Grievance Form A is dated October 2, 2007 but appears to have been received by the agency on October 3, 2007.

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 five workdays *after receipt* of the written notice to correct the noncompliance.⁵ If the grievant does not correct the noncompliance within five 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 has failed to advance or conclude her grievance within five work days of receiving the first management resolution step response. However, although the agency notified the grievant of noncompliance, it did not give her a full five days to correct it once she *received* the notice. Accordingly, the request to close the grievance is premature and the agency must allow the grievant five workdays to advance or conclude her grievance. If she does not, then the agency may seek a ruling from this Department.

The grievant should note: If she no longer desires to continue with her grievance she should notify, in writing, the agency's human resource office.

Claudia T. Farr
Director

³ *Id.*

⁴ See EDR Ruling No. 2007-1454. See also Frequently Asked Grievance Question #29 on EDR's website at <http://www.edr.virginia.gov/faqs.htm>.

⁵ *Id.* (emphasis added).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*