

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: January 14, 2008; Ruling #2008-1899, 2008-1900; Agency: Virginia Department of Transportation; Outcome: Grievant Not In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of Transportation
Ruling Nos. 2008-1899 and 2008-1900
January 14, 2008

The Department of Transportation (VDOT or the agency) seeks to administratively close the grievant's April 18 and June 6, 2007 grievances. 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 grievances.

FACTS

On April 18, 2007, the grievant initiated two expedited grievances challenging alleged mistreatment and discrimination by VDOT employees. He also asserted that he was being inappropriately compensated for his work. Because the grievant asserted that, among other things, he had been discriminated against on the basis of his age and race, the agency placed the grievances on hold until the agency's Civil Rights Division completed an internal investigation into his discrimination allegations.

On May 14, 2007, the agency informed the grievant that it was closing its investigation into the allegations of discrimination because of insufficient evidence upon which to draw an inference of discrimination. Additionally, the agency pointed out that because the grievant had not suffered any loss of pay or wages, he had improperly used an expedited form to initiate his grievances. Accordingly, the grievant subsequently re-filed his grievances on June 6, 2007, using the standard Grievance Form A.

Following a second-step meeting, the agency mailed the grievant, on August 28, 2007, two second-step responses dated August 19 and 20, 2007. Because the grievant did not advance or conclude his grievances within five workdays of receiving the second step-responses, the agency mailed the grievant a notice of noncompliance on October 10, 2007. According to letter tracking information provided by the agency, the October 10th letter was delivered to the grievant on October 13, 2007. According to the agency, that grievant has not brought the grievances back into compliance.

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 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 close an allegedly non-compliant grievance without first seeking such a ruling from the EDR Director.³ If the EDR finds that the grievant is out of compliance, EDR will order the grievant to correct the non-compliance.⁴ If it is not corrected within the designated timeframe, the agency may then close the grievance.⁵

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

As the grievant has failed to advance or conclude his grievances in a timely manner, he has failed to comply with the grievance procedure.⁶ 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 grievances or advance his grievances to the third step. If he does not, the agency may administratively close the grievances without any further action on its part. The grievances 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).

As a final matter, this Department is compelled to note that while the parties are free to agree in writing to place a grievance on hold during the pendency of an investigation,⁷ it is not proper for the agency to unilaterally stay the processing of a grievance.

¹ *Grievance Procedure Manual*, § 6.3.

² *Id.*

³ 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>.

⁴ *Id.*

⁵ *Id.*

⁶ See *Grievance Procedure Manual* § 3.3.

⁷ *Grievance Procedure Manual*, § 8.4.

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

Claudia T. Farr
Director

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