

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: April 17, 2008;  
Ruling #2008-2010; 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 Department of Health  
Ruling No. 2008-2010  
April 17, 2008

The Department of Health (VDH or the agency) seeks to administratively close the grievant's January 17, 2008 grievance. 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 January 17, 2008, prior to her resignation from VDH,<sup>1</sup> the grievant initiated a grievance challenging a written notice she received on January 7, 2008 for disruptive behavior. The first step response was sent to the grievant via certified mail on January 28, 2008, and was ultimately received by the grievant on February 6, 2008.<sup>2</sup> Because the grievant never advanced or concluded her grievance within five work days of her receipt of the first management resolution step response, on February 19, 2008, the agency sent a notice of noncompliance to the grievant by certified mail. The agency asserts that it never got confirmation of delivery of the February 19<sup>th</sup> notice of noncompliance and as such, sent a copy of the letter of noncompliance via regular U.S. mail on March 15, 2008. Because more than five workdays have elapsed since the grievant's presumed receipt of the notice of noncompliance letter and the grievant has not yet cured the noncompliance, the agency seeks a compliance ruling.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>3</sup> That process assures that the parties first communicate with each

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<sup>1</sup> According to the agency, the grievant's resignation was effective at the close of business on January 17, 2008, and the grievant initiated her grievance prior to close of business on January 17<sup>th</sup>.

<sup>2</sup> It appears that the January 28<sup>th</sup> certified mailing was never received by the grievant. As such, the agency sent the grievant another copy of the first resolution step response via certified mail on February 4, 2008, which was subsequently received by the grievant on February 6, 2008.

<sup>3</sup> *Grievance Procedure Manual* § 6.3.

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.<sup>4</sup> 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.<sup>5</sup>

In this case, the grievant has failed to advance or conclude her January 17, 2008 grievance within five workdays of receiving the first resolution step response. Moreover, VDH appears to have notified the grievant of her noncompliance, but the grievant has not advanced or concluded the grievance.

As the grievant has failed to advance or conclude her grievance in a timely manner, she has failed to comply with the grievance procedure.<sup>6</sup> This Department therefore orders the grievant to correct her noncompliance **within ten workdays of the date of this ruling** by notifying her human resources office in writing that she wishes to either conclude her January 17<sup>th</sup> grievance or continue to the second management resolution step of the grievance process. If she does not, the agency may administratively close the January 17, 2008 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.<sup>7</sup>

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Claudia T. Farr  
Director

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<sup>4</sup> *Id.*

<sup>5</sup> 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.

<sup>6</sup> See *Grievance Procedure Manual* § 3.1.

<sup>7</sup> See Va. Code § 2.2-1001(5), 2.2-3003(G).