

Issue: Compliance – Grievance Procedure (Other Issue); Ruling Date: June 26, 2008; Ruling #2008-2042; Agency: Department of Mental Health, Mental Retardation and Substance Abuse Services; Outcome: Grievant 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. 2008-2042  
June 26, 2008

The Department of Mental Health, Mental Retardation and Substance Abuse Services (the agency) seeks to administratively close the grievant's April 7, 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 his grievance.

FACTS

The grievant initiated his grievance, dated April 7, 2008, to challenge an allegedly hostile workplace. Because of an illness, the first step-respondent was not able to provide a written response to the grievance until April 28, 2008. On April 30, 2008, the grievant advanced his grievance to the second step. Three days later, on May 1, 2008, the grievant e-mailed the Director of Administration for the facility where he works, stating that he wished to conclude his grievance. The agency asserts that he was asked to return his grievance marked as concluded but he has not yet done so.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>1</sup> 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.<sup>2</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

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<sup>1</sup> *Grievance Procedure Manual* § 6.3.

<sup>2</sup> *Id.*

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>3</sup>

In this case, the grievant informed the agency that he wished to conclude his grievance. Moreover, when the investigating consultant for this ruling contacted the grievant, he stated that he indeed desires to conclude his grievance and that he mailed his grievance back to the agency some time ago. Accordingly, the agency may now conclude the grievant's April 7, 2008 grievance.

This Department's rulings on matters of compliance are final and nonappealable.<sup>4</sup>

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Claudia T. Farr  
Director

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<sup>3</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>4</sup> See Va. Code § 2.2-1001(5), 2.2-3003(G).