

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: October 20, 2008; Ruling #2009-2146; 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 No. 2009-2146  
October 20, 2008

The Department of Transportation (the agency) seeks to administratively close the grievant's June 9, 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

In her June 9, 2008 grievance, the grievant has challenged issues regarding her shift assignment. The grievance advanced through the management resolution steps and when the agency failed to qualify the grievance for hearing, the grievant asked this Department to do so.<sup>1</sup> This Department declined to qualify the grievance and informed the grievant in a September 3, 2008 qualification ruling, that if the grievant wanted the circuit court to qualify her grievance for hearing, she needed to request qualification within five workdays of receipt of the ruling.<sup>2</sup> After the grievant failed to advance her grievance, the agency sent the grievant a letter by certified and first class mail, dated September 18, 2008, indicating that she was out of compliance with the grievance procedure.<sup>3</sup> Because the grievant has not advanced or concluded her grievance, the agency now seeks this compliance ruling.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>4</sup> That process assures that the parties first

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<sup>1</sup> See EDR Ruling No. 2009-2105.

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

<sup>3</sup> The mailing of correspondence, properly addressed and stamped, raises a presumption of receipt of the correspondence by the addressee. *E.g.*, *Washington v. Anderson*, 236 Va. 316, 322, 373 S.E.2d 712, 715 (1988). As such, it is presumed that the first class mailing reached the grievant's address. However, if the grievant were to show that she did not receive this notification, for instance, because the grievant had moved, such facts will be taken into account as to whether good cause may exist for reopening the grievance should it be administratively closed.

<sup>4</sup> *Grievance Procedure Manual* § 6.3.

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>5</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>6</sup>

As the grievant has apparently failed to advance or conclude her grievance in a timely manner, she appears to have failed to comply with the grievance procedure. This Department therefore orders the grievant to correct this noncompliance **within ten work days of the date of this ruling** by notifying the agency's human resources office in writing that she wishes to either conclude the grievance or appeal this Department's qualification decision to circuit court. If she 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.<sup>7</sup>

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Claudia T. Farr  
Director

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<sup>5</sup> *Id.*

<sup>6</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>7</sup> See Va. Code § 2.2-1001(5); 2.2-3003(G).