

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: December 30, 2008; Ruling #2009-2193; Agency: Virginia Department of Health; Outcome: Grievant Not In Compliance.



*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*

**COMPLIANCE RULING OF DIRECTOR**

In the matter of the Department of Health  
Ruling No. 2009-2193  
December 30, 2008

The Department of Health (the agency) seeks to administratively close the grievant's June 17, 2008 grievance. The agency alleges that the grievant has failed to comply with the time limits prescribed in EDR Ruling No. 2009-2081 for advancing his grievance.

FACTS

This Department addressed certain procedural aspects concerning the initiation and timeliness of this grievance, dated June 17, 2008, in EDR Ruling No. 2009-2081. The grievant was instructed in that Ruling to "resubmit his grievance to the first-step respondent using the Grievance Form A," if he wished to proceed, "within five workdays of his receipt of [the] ruling."<sup>1</sup> However, the grievant has apparently failed to resubmit the grievance package to the agency. Because the grievant never resubmitted his grievance, the agency mailed the grievant a notice of noncompliance on November 21, 2008, which was apparently delivered at the grievant's address on November 26, 2008. Because more than five workdays have elapsed since the receipt of the notice of noncompliance letter, and it appears 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>2</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>3</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

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<sup>1</sup> EDR Ruling No. 2009-2081.

<sup>2</sup> *Grievance Procedure Manual* § 6.3.

<sup>3</sup> *Id.*

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>4</sup>

In this case, it appears the grievant has failed to resubmit his grievance within the five workdays specified in EDR Ruling No. 2009-2081. Moreover, the agency has notified the grievant of his noncompliance, but the grievant has apparently not advanced the grievance.

As the grievant has apparently failed to resubmit his grievance in the prescribed timeframe, he has failed to comply with the grievance procedure.<sup>5</sup> This Department therefore orders the grievant to correct his noncompliance **within ten workdays of the date of this ruling** if he has not already done so by resubmitting his Grievance Form A to the first step-respondent or by notifying his agency human resources office in writing that he wishes to conclude the grievance. If he 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>6</sup>

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Claudia T. Farr  
Director

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<sup>4</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>5</sup> EDR Ruling No. 2009-2081.

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