

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date:  
February 12, 2009; Ruling #2009-2218; Agency: Old Dominion University;  
Outcome: Grievant Not In Compliance.



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of the Old Dominion University  
Ruling No. 2009-2218  
February 12, 2008

Old Dominion University (the University) seeks to administratively close the grievant's November 14, 2008 grievance. The University 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

According to the University, the grievant initiated her November 14, 2008 grievance regarding a Written Notice. The first step-respondent provided a written response to the grievance on or around November 19, 2008. Because the grievant had failed to return the grievance package to the University to advance or conclude the grievance within five workdays of receiving the first step response, the University mailed the grievant a notice of noncompliance on December 16, 2008 by both certified and regular mail.<sup>1</sup> Because more than five workdays have elapsed since the grievant is presumed to have received the notice of noncompliance letter, and the grievant has not yet cured the noncompliance, the University 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

---

<sup>1</sup> While it appears that the grievant did not receive the certified mail, 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). Accordingly, we must presume that the grievant received the University's notification by regular mail. Further, the grievant was copied on the University's ruling request letter in accordance with the *Grievance Procedure Manual*, and, therefore, should be on notice of this matter.

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

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 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, the grievant appears to have failed to advance or conclude her grievance within five workdays of receiving the first resolution step response. Moreover, the University appears to have notified the grievant of the noncompliance, but the grievant has not yet cured the issue.

As the grievant has apparently failed to advance or conclude her grievance in a timely manner, she has failed to comply with the grievance procedure.<sup>5</sup> This Department therefore orders the grievant to correct this noncompliance **within ten workdays of the date of this ruling** by notifying the University's human resources office in writing that she wishes to either conclude the grievance or continue to the second step of the grievance process. If the grievant does not do so, the University 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>

---

Claudia T. Farr  
Director

---

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

<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> See *Grievance Procedure Manual* § 3.1.

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