

Issue: Compliance – Grievance Procedure (Second Step Meeting); Ruling Date: July 7, 2009; Ruling #2009-2349; Agency: Virginia Department of Agriculture and Consumer Services; Outcome: Grievant Not In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Agriculture and Consumer Services
Ruling No. 2009-2349
July 7, 2009

The Department of Agriculture and Consumer Services (the agency) seeks a compliance ruling regarding the grievant's November 21, 2008 grievance. The agency alleges that the grievant has failed to comply with the grievance procedure by failing to pursue her grievance at the stage of the second step meeting.

FACTS

On November 21, 2008, the grievant initiated a grievance concerning her performance evaluation. Both the agency and the grievant attempted to schedule the second step meeting in December 2008, but ultimately agreed to an extension. The agency provided the grievant possible meeting dates, but the grievant indicated by e-mail that the meeting could not occur until January 2009. The grievant also stated in the e-mail that she was still determining who will need to attend the meeting and that she would get back to the second step-respondent the following week. That e-mail was dated December 5, 2008, and was apparently the last communication with the grievant about this grievance. According to the agency, the grievant subsequently resigned orally on December 15, 2008. However, because this grievance had not been resolved, the agency sent the grievant a notice of noncompliance on May 20, 2009 and June 3, 2009. Because the grievant has not responded to these letters and has apparently not pursued her grievance, the agency seeks a compliance ruling.

DISCUSSION

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

¹ *Grievance Procedure Manual* § 6.3.

² *Id.*

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.³

The *Grievance Procedure Manual* provides that “[w]ithin 5 workdays of the second-step respondent’s receipt of the grievance, the second-step meeting must be held.”⁴ The agency alleges that the grievant has violated this portion of the grievance procedure by failing to contact the agency to schedule the meeting and advise who would be in attendance. Although, it does not appear that there is any specific requirement of the grievance procedure that expressly requires the grievant to cooperate with the scheduling of the second step meeting, certainly such collaboration is expected. Nonresponsiveness by parties to a grievance does not support the purpose of the grievance process to resolve workplace disputes fairly and promptly.⁵ This is especially the case when the grievant had indicated to the agency that she was determining who would be attending the meeting and would contact the second step-respondent with this information. The grievant’s nonresponsiveness, combined with her subsequent resignation, indicates potential abandonment of the grievance.

As the grievant has apparently failed to advance or conclude her grievance, the evident abandonment amounts to a failure to comply with the grievance procedure. This Department therefore orders the grievant to correct this noncompliance **within ten workdays of the date of this ruling** by contacting the agency’s human resources office in writing that she wishes to either conclude the grievance or continue with the scheduling of the second step meeting. If the grievant does not do so, 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.⁶

Claudia T. Farr
Director

³ 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.

⁴ *Grievance Procedure Manual* § 3.2.

⁵ See *Grievance Procedure Manual* § 1.1.

⁶ See Va. Code §§ 2.2-1001(5), 2.2-3003(G).