

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: July 10, 2009; Ruling #2009-2355; Agency: Department of Corrections; Outcome: Grievant Not In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of Corrections
Ruling No. 2009-2355
July 10, 2009

The Department of Corrections (the agency) seeks to administratively close the grievant's December 5, 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 to challenge a Notice of Improvement Needed. On or about February 26, 2009, the agency head provided a written response to the grievant's request that his grievance be qualified for hearing. In the response, the agency head denied the grievant's request. Since that time, the grievant has failed to either advance or conclude his grievance. Because the grievant has not advanced or concluded his grievance within five workdays of receiving the February 26, 2009 agency head's denial, the agency sent the grievant a notice of noncompliance on April 7, 2009. Because more than five workdays have elapsed since the notice of noncompliance letter was received, and the grievant has not yet cured the alleged noncompliance, 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

¹ *Grievance Procedure Manual* § 6.3.

² *Id.*

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.³

Here, the agency head provided a response to the request for qualification. Thus, the two remaining options for the grievant are to either conclude his grievance or to ask this Department to rule on qualification. As the grievant has done neither, he has failed to comply with the grievance procedure.⁴ This Department therefore orders the grievant to correct this noncompliance **within ten workdays of the date of this ruling** by notifying the agency human resources office in writing that he either: (1) wishes to conclude his grievance, or (2) requests that this Department qualify his grievance for hearing. If he does neither, 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.⁵

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 See *Grievance Procedure Manual* § 4.3.

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