

Issues: Compliance – Grievance Procedure (Resolution Steps and Second Step Meeting); Ruling Date: November 2, 2009; Ruling #2010-2445, 2010-2454; Agency: Department of Motor Vehicles; Outcome: Agency in Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of Motor Vehicles
Ruling Nos. 2010-2445, 2010-2454
November 2, 2009

The grievant has sought a compliance ruling concerning her September 2, 2009 grievance with the Department of Motor Vehicles (the agency) due to the agency's alleged noncompliance in handling this grievance.¹

FACTS

The grievant states that the agency engaged in various noncompliant acts during her April 6, 2009 grievance. She asserts that the agency is engaging in similar "stonewalling" tactics in her current September 2, 2009 grievance. This grievance is currently on hold following the second step meeting on October 2, 2009, pending the resolution of this compliance ruling.

Based on a review of the documents, it appears the grievant submitted her grievance on September 2, 2009. The grievant states she submitted this grievance to the district office. Once the agency routed the grievance to the appropriate individual on September 18, 2009, the first step-respondent responded on the same day. A second step meeting was scheduled shortly thereafter and held on October 2, 2009.

DISCUSSION

Delays

Although 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,² this Department favors having grievances

¹ The grievant had also initially sought a compliance ruling to consolidate two of her grievances. The grievant was contacted to determine whether she would be amenable to delaying the hearing on her April 6, 2009 grievance, which was already appointed to a hearing officer, to allow the September 2, 2009 grievance to catch up. Because of the grievant's failure to provide a definitive answer, the consolidation request was eventually rendered moot as the hearing on the April 6, 2009 grievance went forward.

² See Va. Code § 2.2-3003(G).

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.

In this September 2, 2009 grievance, the grievant asserts that the agency has engaged in "stonewalling" tactics, as allegedly similarly done in her earlier April 6, 2009 grievance.³ While it took a number of days for the agency to respond to the grievance at the first step, the first step-respondent also responded as soon as he received the grievance package. Other than this minor delay, this Department does not find any other noncompliance with the grievance procedure in the September 2, 2009 grievance.⁴ Therefore, this Department cannot conclude that the agency's conduct substantially violated the grievance procedure, much less that the agency was motivated by bad faith or a gross disregard of the grievance procedure. No award of relief is warranted at this time.

Second Step Meeting

The grievant has also asserted that the agency engaged in noncompliance during the second step meeting on October 2, 2009. The grievant states that one of the members of management in the meeting "vigorously pursued a badgering barrage of questions." She said that this individual "fussed" at her about issues with document requests. The grievant was also greatly concerned because the second step-respondent took a call on his cell phone from a particular individual. It appears the grievant states that the goal of the agency was to intimidate her through these actions.

While it would certainly be inappropriate to attempt to intimidate a grievant in a second step meeting, based on the grievant's allegations, this Department cannot find that the agency engaged in intimidating conduct during the meeting. The agency, like the grievant, has the right to ask questions of the other side during the meeting.⁵ However, the meeting is not to be adversarial.⁶ Thus, both sides must participate in the meeting in a courteous manner and display appropriate respect for everyone present. While

³ To the extent the grievant is seeking a ruling or relief on the agency's alleged noncompliance during the management steps of her April 6, 2009 grievance, such arguments have been waived at this point given the posture of that case. *See Grievance Procedure Manual* § 6.3 ("By proceeding with the grievance after becoming aware of a procedural violation, one may forfeit the right to challenge the noncompliance at a later time.")

⁴ It appears that the grievant may also have claimed that the second step-respondent was delaying by not providing a written response. However, prior to the time when the response was due, the grievant had requested this compliance ruling, which stopped the grievance process temporarily. *See Grievance Procedure Manual* § 6.1. As such, the second step-respondent's "delay" was compliant with the grievance procedure.

⁵ *See Grievance Procedure Manual* § 3.2.

⁶ *Id.*

“vigorous” questioning and “fussing” could run afoul of these standards, it is not clear that such was the case here. In addition, while it could have appeared disrespectful to take a call during the second step meeting, regardless of who the call was from, this is not sufficient misconduct that would warrant any finding of noncompliance.⁷

This Department’s rulings on matters of compliance are final and nonappealable.⁸

Claudia T. Farr
Director

⁷ Even though the particular individual who called the second step-respondent had a profound impact on the grievant, this Department cannot find that simply by receiving this call the step-respondent was attempting to intimidate the grievant.

⁸ See Va. Code §§ 2.2-1001(5), 2.2-3003(G).