

Issue: Compliance – Grievance Procedure (5 Day Rule); Ruling Date: February 17, 2010; Ruling #2010-2536; Agency: Department of Corrections; Outcome: Agency In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of Corrections
Ruling No. 2010-2536
February 17, 2010

The grievant seeks a compliance ruling regarding his four grievances with the Department of Corrections (the agency). The grievant alleges that the agency head has failed to comply with the time limits set forth in the grievance procedure for responding to the grievances.

FACTS

The grievant states the agency received his four grievances for the qualification stage on January 26, 2010. At that time, the grievant had also requested a compliance ruling from this Department (EDR), which was currently pending. That compliance ruling was issued on February 1, 2010.¹ The agency head mailed a response to the four grievances at the qualification stage on February 11, 2010.

DISCUSSION

In this case, the process was stayed temporarily until EDR issued Ruling No. 2010-2515 on February 1, 2010. The agency head mailed a response to the grievances on February 11, 2010. Even if the agency head's responses were not timely, the issuance of the written responses has rendered moot any issue of noncompliance for failure to respond. Further, the minor delays in this case would not constitute substantial noncompliance with the grievance procedure.² This Department again finds no indication of any bad faith on the part of the agency warranting relief on the merits.

¹ EDR Ruling No. 2010-2515.

² 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. *See* Va. Code § 2.2-3003(G). 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.

While the agency's actions in this case do not warrant a finding on the merits at this time, this Department notes that the grievance process is intended to provide the parties with an expeditious way to resolve workplace issues and therefore adherence to the five workday rule is crucial. The noncompliance provisions of the grievance process are not, and were never intended to be, a mechanism to allow the parties to extend the five workday rule. As such, this Department does not condone any party failing to comply with the time limits set forth in the grievance process and strongly cautions that repeated disregard for the five workday rule could result in a decision against the noncompliant party.³

This Department's rulings on matters of compliance are final and nonappealable.⁴

Claudia T. Farr
Director

³ See, e.g., EDR Ruling ## 2003-049 and 2003-053, 2007-1470, 2007-1420. We note in this case any sort of intermediate sanction against the agency such as qualification by this agency prior to the completion of the management steps is unavailable because the agency has qualified all grievances.

⁴ See Va. Code §§ 2.2-1001(5), 2.2-3003(G).