

Issue: Compliance – Grievance Procedure (Other Issue); Ruling Date: August 10, 2010; Ruling #2010-2539; Agency: Virginia Department of Transportation; Outcome: Grievant In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Transportation
Ruling No. 2010-2539
August 10, 2010

On February 11, 2010, this Department received a request for a qualification ruling in the June 24, 2009 grievance filed by the grievant against the Department of Transportation (VDOT or the agency). At the third management resolution step of the grievance process, the grievant wrote in the "Employee's comments" section of the Form A, "I am requesting all documents related to this grievance." After the agency head denied the grievant's request for qualification for hearing, the grievant again wrote in the "Employee's comments" section of the Form A, "I am again requesting all documents related to this grievance."

During this Department's investigation of the grievant's request for qualification of her June 24, 2009 grievance, the grievant indicated that she had not received the documents requested at the third management resolution and qualification steps of the grievance process. As a result, the grievant has asked this Department to temporarily stay its qualification determination until resolution of any pending document request(s).

Under Section 8.2 of the grievance procedure, a grievant has the right to demand that the grievance process temporarily halt until requested documents are provided.¹ Moreover, this Department has a long standing rule that parties to a grievance should have access to relevant documents during the management steps and qualification phase, prior to the hearing phase. As such, this Department is temporarily staying its qualification determination until resolution of all pending documents request(s). Once all documents issues are resolved, the grievant is directed to notify this Department in writing whether she wishes to proceed with her request for qualification.²

Claudia T. Farr
Director

¹ *Grievance Procedure Manual* § 8.2.

² This Department recognizes that during the course of another grievance, the agency attempted to provide documents to the grievant via certified mail, but the documents went unclaimed by the grievant and were ultimately returned to the agency. According to the agency, the grievant was contacted regarding the unclaimed documents and asked to make arrangements with the agency to obtain the documents, but she failed to do so. Whether the grievant's actions were out of compliance with the grievance process is the subject of another EDR ruling and will not be discussed here. However, this situation is mentioned in an effort to prevent it from occurring again. As such, the parties are encouraged to discuss with one another the best means by which to send the documents prior to the documents being sent. At a minimum, it would seem that the documents should be sent via regular U.S. first class mail because 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).