

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: May 7, 2010;  
Ruling #2010-2633; Agency: Department of Medical Assistance Services; Outcome:  
Grievant In Compliance (issue moot).



*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*

**COMPLIANCE RULING OF DIRECTOR**

In the matter of Department of Medical Assistance Services  
Ruling No. 2010-2633  
May 7, 2010

The Department of Medical Assistance Services (“DMAS” or “agency”) seeks to administratively close the grievant’s November 20, 2009 grievance.

FACTS

On November 20, 2009, the grievant initiated a grievance concerning her request for an exception to the maximum carryover of annual leave time permitted by policy. The grievance advanced through the management resolution steps but was not qualified for hearing by the agency head. Accordingly, the grievant requested that this Department qualify her grievance for hearing. In EDR Ruling No. 2010-2574, this Department declined to qualify it and informed her that:

If the grievant wishes to appeal the qualification determination to the circuit court, the grievant should notify the human resources office, in writing, within five workdays of receipt of this ruling and file a notice of appeal with the circuit court pursuant to Va. Code § 2.2-3004(E). If the court should qualify this grievance, within five workdays of receipt of the court’s decision, the agency will request the appointment of a hearing officer unless the grievant wishes to conclude the grievance and notifies the agency of that desire.

Additionally, there was a one-page attachment to EDR Ruling No. 2010-2574 entitled “Important Information.” In this attachment, the grievant was told: “[i]f you choose not to appeal this [qualification] ruling [to circuit court], you should notify your Human Resources office, in writing, that the grievance is concluded and return the Form A to your Human Resources office within five work days of receipt of this ruling.”

When the grievant failed to either advance or conclude her November 20, 2009 grievance within 5 workdays of her presumed receipt of EDR Ruling No. 2010-2574, the agency notified the grievant of her noncompliance. The grievant thereafter sent the agency an e-mail indicating that she desired to conclude her grievance.<sup>1</sup>

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<sup>1</sup> In her April 26, 2010 e-mail to agency human resources, the grievant states in relevant part: “I did not realize that I had to send something in writing to the HR because the EDR ruling indicated that I needed to notify HR if I wanted to appeal the EDR ruling. I do not wish to appeal the EDR ruling of March 29, 2010 to the Circuit Court.”

### DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>2</sup> 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.<sup>3</sup> 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 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.<sup>4</sup>

In this case, the grievant appears to have failed to advance or conclude her grievance within five workdays of presumably receiving this Department's qualification decision (EDR Ruling No. 2010-2574). However, the grievant has corrected any potential noncompliance by notifying the agency that she wishes to conclude her November 20, 2009 grievance, thereby rendering any issue of purported noncompliance moot. Accordingly, because the grievant has indicated that she desires to go no further with her November 20, 2009 grievance, the agency may administratively close the grievance without any further action on its part. This Department's rulings on matters of compliance are final and nonappealable.<sup>5</sup>

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Claudia T. Farr  
Director

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<sup>2</sup> *Grievance Procedure Manual* § 6.3.

<sup>3</sup> *See Id.*

<sup>4</sup> 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.

<sup>5</sup> *See* Va. Code § 2.2-1001(5); 2.2-3003(G).