

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: June 29, 2010; Ruling #2010-2658; Agency: University of Mary Washington; Outcome: Grievant Not In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of University of Mary Washington
Ruling No. 2010-2658
June 29 2010

The University of Mary Washington (the University) seeks to administratively close the grievant's June 26, 2009 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

On June 26, 2009, the grievant initiated a grievance challenging two Group II Written Notices. Shortly after initiating his grievance, the grievant provided the University with medical documentation indicating his inability to proceed with the grievance due to health concerns. As such, the University agreed to temporarily stay the grievance. However, on February 8, 2010, the University informed the grievant that he needed to either proceed with his grievance and meet with the second step respondent or provide medical documentation of his inability to participate in the grievance process.

The grievant elected to proceed with his grievance and on or about March 29, 2010, the third step response was sent to the grievant. Because the grievant did not advance or conclude his grievance within 5 workdays of his receipt of the third resolution step response, the University sent the grievant written notice of noncompliance on April 27, 2010, which was received by the grievant on May 3, 2010. As more than five workdays have elapsed since the University's notification of noncompliance, and the grievant has not yet cured the noncompliance, the University 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

¹ *Grievance Procedure Manual* § 6.3.

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 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

In this case, the grievant has failed to advance or conclude his grievance within five workdays of receiving the third resolution step response. Moreover, the University appears to have notified the grievant of his noncompliance, but the grievant has not advanced or concluded his grievance. Therefore, he is out of compliance with the grievance procedure. However, during this Department's investigation for this ruling, the grievant indicated that while he desires to proceed with his grievance, he is unsure his doctor will permit him to do so due to his health condition. The grievant has indicated that he has an appointment with his doctor on June 28, 2010 and will consult with his doctor on his ability to proceed with the grievance at that time. Accordingly, this Department orders the grievant to correct his noncompliance **within ten work days of June 28, 2010** by notifying his human resources office in writing that he wishes to (1) conclude his grievance, (2) advance the grievance to the agency head for a qualification determination, or (3) he may ask the University for another postponement of the grievance process due to continuing health concerns, with supporting documentation from his doctor. If he does not do one of these three things within the mandated time period, 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.⁴

Claudia T. Farr
Director

² See *Id.*

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 Va. Code § 2.2-1001(5); 2.2-3003(G).