

Issue: Compliance – Grievance Procedure (5 Day Rule); Ruling Date: June 4, 2010; Ruling #2010-2659; Agency: Department of Social Services; Outcome: Grievant Not In Compliance.



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of the Department of Social Services  
EDR Ruling No. 2010-2659  
June 4, 2010

The agency has requested a compliance ruling related to the grievant's February 19, 2010 grievance filed with the Department of Social Services ("agency"). 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 February 19, 2010, the grievant initiated a grievance challenging his placement on pre-disciplinary leave. The second step response was apparently sent to the grievant on or about April 20, 2010. Because the grievant did not advance or conclude his grievance within 5 workdays of receiving the response, the agency sent the grievant a notice of noncompliance via first-class and certified mail on May 3, 2010.<sup>1</sup> Because more than five workdays have elapsed since the grievant was notified of the noncompliance, and the grievant has apparently not yet cured the non-compliance, the agency seeks a compliance ruling.

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,

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<sup>1</sup> Postal records indicate attempts to deliver the certified letter on May 5<sup>th</sup> and 10<sup>th</sup>, 2010. While the grievant apparently never picked up the certified letter, the first class letter was presumably delivered on about the same date.

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

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

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 his grievance within five workdays of receiving the second step response. Moreover, the agency has provided evidence that it notified the grievant of his noncompliance, but the grievant has apparently not advanced or concluded his grievance.

As the grievant has apparently failed to advance or conclude his grievance in a timely manner, he has failed to comply with the grievance procedure.<sup>5</sup> This Department therefore orders the grievant to correct his noncompliance **within ten work days of the date of this ruling** by notifying his human resources office in writing that he wishes either to conclude his grievance or advance it to the third step. If he does not, 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.<sup>6</sup>

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Claudia T. Farr  
Director

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<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 *Grievance Procedure Manual* § 3.2

<sup>6</sup> See Va. Code § 2.2-1001(5); 2.2-3003(G).