

Issue: Compliance – Grievance Procedure (Other Issue); Ruling Date: August 10, 2010; Ruling #2011-2705; Agency: University of Mary Washington; Outcome: No Ruling – request denied.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

RECONSIDERED COMPLIANCE RULING OF DIRECTOR

In the matter of University of Mary Washington
Ruling No. 2011-2705
August 10, 2010

The University of Mary Washington (the University) asks this Department to reconsider its compliance decision in EDR Ruling No. 2010-2658. The University's request has been reviewed and we conclude that there are no grounds for which reconsideration of EDR Ruling No. 2010-2658 is appropriate.

FACTS AND PROCEDURAL HISTORY

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. The agency subsequently asked this Department for a compliance ruling due to the grievant's failure to advance or conclude his grievance within 5 workdays.

In EDR Ruling No. 2010-2658, this Department found the grievant had failed to advance or conclude his grievance within the mandated 5 workday time period and as such, had failed to comply with the grievance process.¹ During the course of this Department's investigation for EDR Ruling 2010-2658, the grievant indicated that he was potentially unable to proceed with his grievance due to a medical condition and that he needed to be assessed by his doctor before he

¹ EDR Ruling No. 2010-2658.

could make a determination on whether to proceed.² Based on this information, this Department ordered the grievant to take one of the following actions within 10 workdays of his June 28, 2010 doctor's appointment: (1) conclude his grievance, (2) advance the grievance to the agency head for a qualification determination, or (3) ask the University for another postponement of the grievance process due to continuing health concerns, with supporting documentation from his doctor.³

Prior to the expiration of the 10 workdays following his June 28th doctor's appointment, the University asked this Department to reconsider its decision in EDR Ruling No. 2010-2658 and to administratively close the grievance. In support of its request, the University asserts that it had no knowledge of the grievant's current potential medical condition and possible need for another stay of the grievance process, the grievant has created "excessive delay" in processing this grievance due to his "lack of responsiveness" and that to process this grievance creates an "undue hardship on management" because the grievance has "grown stale and the management staff in the grievance has changed."

DISCUSSION

As discussed in EDR Ruling No. 2010-2658, 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. Moreover, 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.

In its request for reconsideration of EDR Ruling No. 2010-2658, the University is again asking this Department for administrative closure of the grievant's June 26, 2009 grievance. In this case, and in keeping with our extensive precedent on this issue, this Department did not administratively close the June 26, 2009 grievance on the basis of noncompliance but ordered the grievant to take action to correct his noncompliance within a specified time period. The University has submitted nothing that would alter this Department's determination. In particular, this Department cannot find that the grievant's actions were driven by bad faith or a gross disregard of the grievance procedure.⁴ Finally, while the management staff may have changed

² *Id.*

³ *Id.*

⁴ It should be noted that on July 9, 2010, the grievant secured a note from this doctor indicating that he was unable to process his grievance due to a medical condition, which was apparently provided to the University.

since the filing of this grievance, this is not a basis upon which to administratively close a grievance.

Based on the foregoing, the University's request for reconsideration of EDR Ruling No. 2010-2658 cannot be granted. This Department's rulings on matters of compliance are final and nonappealable.⁵

Claudia T. Farr
Director

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