

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: August 26, 2010; Ruling #2011-2739, 2011-2742; Agency: Department of Social Services; Outcome: Grievant Not in Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULINGS OF DIRECTOR

In the matter of Department of Social Services
Ruling Nos. 2011-2739 and 2011-2742
August 26, 2010

The Department of Social Services (DSS or the agency) seeks to administratively close the grievant's June 22, 2010 and June 25, 2010 grievances. The agency alleges that the grievant has failed to comply with the time limits set forth in the grievance procedure for advancing or concluding her grievances.

FACTS

On June 22, 2010, the grievant initiated a grievance challenging alleged harassment by her supervisor. Similarly, on June 25, 2010, the grievant initiated a second grievance challenging alleged harassment by her immediate supervisor and in particular, a counseling memorandum that was issued on June 25, 2010. According to the agency, the consolidated second resolution step response was sent to the grievant via certified mail and U.S. first-class mail on or about July 7, 2010.¹ Because the grievant did not advance or conclude her grievances within 5 workdays of presumably receiving the second resolution step response, the agency sent the grievant a notice of noncompliance on July 26, 2010 via certified mail and U.S. first-class mail. Because more than five workdays have elapsed since the agency's apparent notification of noncompliance,² and the grievant has not yet cured the non-compliance, the agency seeks compliance rulings.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.³ 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

¹ It is unclear whether the certified mailing was received; however, the second resolution step response was also sent via regular U.S. first class mail. 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).

² *Id.*

³ *Grievance Procedure Manual* § 6.3.

workdays for the opposing party to correct any noncompliance.⁴ 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.⁵

In this case, the grievant appears to have failed to advance or conclude her grievances within five workdays of presumably receiving the consolidated second resolution step response. Moreover, the agency appears to have notified the grievant of her noncompliance, but the grievant has not advanced or concluded her grievances.

As the grievant has apparently failed to advance or conclude her grievances in a timely manner, she has failed to comply with the grievance procedure.⁶ This Department therefore orders the grievant to correct her noncompliance **within ten work days of the date of this ruling** by notifying her human resources office in writing that she wishes either to conclude her grievances or advance the grievances to the third management resolution step respondent. If she does not, the agency may administratively close both the June 22, 2010 and June 25, 2010 grievances without any further action on its part. The grievances 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.⁷

Claudia T. Farr
Director

⁴ *See Id.*

⁵ 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.

⁶ *See Grievance Procedure Manual* § 3.2.

⁷ *See Va. Code* § 2.2-1001(5); 2.2-3003(G).