

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date:  
November 15, 2010; Ruling #2011-2798; Agency: Virginia Department of  
Transportation; Outcome: Grievant Not In Compliance.



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of Department of Transportation  
Ruling No. 2011-2798  
November 15, 2010

The Department of Transportation (the agency) seeks to administratively close the grievant's August 7, 2010 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 her grievance.

FACTS

On August 7, 2010, the grievant initiated a grievance challenging her receipt of a counseling memorandum. According to the agency, the second resolution step response was received by the grievant on or about September 13, 2010. Because the grievant did not advance or conclude her grievance within 5 workdays of presumably receiving the second resolution step response, the agency sent the grievant a notice of noncompliance via e-mail on September 27, 2010. Because more than five workdays have elapsed since the agency's apparent notification of noncompliance, and the grievant has 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>1</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>2</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)

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<sup>1</sup> *Grievance Procedure Manual* § 6.3.

<sup>2</sup> *See Id.*

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>3</sup>

In this case, it is unclear whether the grievant failed to comply with the 5 workday time period.<sup>4</sup> Moreover, during this Department's investigation for this ruling, the grievant indicated an apparent desire to advance the grievance. In cases where a grievant has allegedly failed to advance or conclude her grievance within the 5 workday time period, this Department routinely orders the grievant to take action within a specified time period. We deem it appropriate to do so in this case as well. This Department therefore orders the grievant to, **within ten work days of the date of this ruling**, notify her human resources office in writing that she wishes either to conclude her grievance or advance the grievance to the third step respondent.

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>3</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>4</sup> During this Department's investigation, the grievant indicated that she was involved in an accident that affected her ability to advance her grievance to the next step in the grievance process and required her to be on sick leave for some period of time.

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