

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: February 2, 2011; Ruling No. 2011-2871; Agency: Department of Motor Vehicles; Outcome: Grievant Not in Compliance (in part) / Agency Not in Compliance (in part).



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Motor Vehicles
Ruling No. 2011-2871
February 2, 2011

The grievant seeks a response from the Department of Motor Vehicles (the “agency”) regarding her October 22, 2010 grievance. The grievant alleges the agency failed to respond to her grievance.

FACTS

On September 8, 2009, the Department of Motor Vehicles hired the grievant to work as a Customer Service Representative. On October 1, 2010, the grievant’s employment was terminated.

On October 22, 2010, the grievant mistakenly initiated a grievance with this Department challenging the agency’s termination as wrongful, alleging that she was medically unable to return to work without restrictions on October 1, 2010. The agency received the October 22, 2010 grievance on November 2, 2010. In a letter dated November 10, 2010, the agency denied the grievant access to the grievance procedure, stating that the grievant was a probationary employee at the time she was terminated. The letter was sent by certified mail, return receipt requested, to the grievant at her address of record, but the envelope was eventually returned to the agency as “unclaimed.”

On December 29, 2010, the grievant sent two email notifications to the agency head stating that she had not received any response from the agency after its receipt of her grievance. The agency did not respond to the grievant’s December 29, 2010 emails. The grievant now seeks a compliance ruling from this Department compelling the agency to respond to her grievance.

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 the other party in writing and allow five workdays for the opposing party to correct any

¹ *Grievance Procedure Manual* § 6.3.

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

Here, the grievant notified the agency head on December 29, 2010 that she received no response from the agency to her grievance. However, it appears that the agency had in fact responded to her grievance by mailing a certified letter, return receipt requested, to the grievant on November 10, 2010. This letter was eventually returned to the agency as "unclaimed." We note the agency's November 10, 2010 letter was sent to the same mailing address that the grievant provided this Department on January 11, 2011. Under these facts, we cannot find that the agency failed to respond to the grievance it received on November 2, 2010. Rather, for whatsoever reason, it appears the grievant did not receive the certified letter sent from the agency to the mailing address she had provided.

Nevertheless, both parties are responsible for timely communicating with each other about noncompliance issues. Communications may be via email, mailed letters, or both. For example, this ruling possibly could have been avoided had the agency replied to the grievant's December 29, 2010 email to the agency head. Likewise, it appears the grievant should have made a diligent effort to claim the certified letter sent by the agency to the mailing address she had provided.

To put this grievance back on track, **within 10 workdays of the date of this ruling**, the grievant shall confirm to the agency her correct mailing address. The agency will then have **five workdays** from the date the agency receives the grievant's mailing address to resend the agency's response to the October 22nd grievance.

This Department's rulings on matters of compliance are final and nonappealable.⁴

Claudia Farr
Director

² *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).