

Issue: Compliance – Grievance Procedure (other issue); Ruling Date: January 31, 2011; Ruling No. 2011-2880; 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 Department of Social Services  
Ruling No. 2011-2880  
January 31, 2011

The Department of Social Services (the agency) seeks to administratively close the grievant's November 15, 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 November 15, 2010, the grievant initiated a grievance challenging her performance evaluation. The second step response was received by the grievant on or about December 1, 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 regular U.S. First-Class mail and certified mail on December 15, 2010. By e-mail dated December 17, 2010, the grievant notified the agency that she had mailed the grievance to the agency's central office address on December 6, 2010. Because the mailed documents were not received, on December 20, 2010, the agency asked the grievant to either e-mail or fax the agency a copy of the grievance documents. The grievant subsequently faxed a copy of the grievance documents to the agency, however, she failed to indicate on the Form A whether she wished to advance or conclude her grievance. As a result, on January 3, 2011, the agency sent the grievant a notice of noncompliance via e-mail. The notice of noncompliance asked the grievant to fax or e-mail the agency another copy of the grievance with the appropriate box checked on the Form A. Because more than five workdays have passed since the notice of noncompliance and the grievant has not notified the agency of her intentions on the Form A, the agency seeks to administratively close the November 15, 2010 grievance.

DISCUSSION

The grievance procedure states that "[w]ithin 5 workdays of receiving the second-step response, the employee must (1) [i]ndicate on the grievance form his intention to continue to the third-step and submit his form to the third-step respondent; or (2) [i]ndicate on the grievance form his intention to conclude the grievance and submit the

form to the Human Resources Office.”<sup>1</sup> Moreover, because the grievant, the agencies, and this Department rely on the Form A to ascertain the intent of the parties, it is incumbent on the parties to clearly express their intentions on the Form A. An inquiry into the objective intent of the parties beyond that which is expressed on the Form A would be impracticable. Therefore, this Department can only rely on the plain language of the Grievance Form A when determining the intent of a party.

In this case, the grievant has returned the Form A to the agency and based upon the grievant’s written comments to the second step response and attached to the Form A, this Department deems it likely that the grievant desires to advance her grievance to the next step in the grievance process. However, it appears that the grievant has failed to indicate her intent on the Form A. As such, the grievant is ordered to fax another copy of her November 15, 2010 grievance to the agency with her intentions indicated on the grievance form **within ten work days of the date of this ruling.**<sup>2</sup> If the grievant has questions regarding the requirements of the grievance procedure and/or how to comply with this ruling, she may contact this Department’s AdviceLine by calling 1-888-232-3842.

This Department’s rulings on matters of compliance are final and nonappealable.<sup>3</sup>

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Claudia T. Farr  
Director

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<sup>1</sup> *Grievance Procedure Manual* § 3.2.

<sup>2</sup> Because the grievant faxed the agency a copy of her November 15, 2010 grievance form in late December, this Department assumes that the grievant has a copy of the grievance in her possession and as such, could easily indicate her intentions on a copy of the November 15, 2010 grievance form and fax it to the agency again. However, if the grievant does not have a copy of the November 15, 2010 grievance form, she is ordered to notify the agency and the agency shall send her a copy of the form for completion.

<sup>3</sup> *See* Va. Code §§ 2.2-1001(5); 2.2-3003(G).