

Compliance – Grievance Procedure (5-Day Rule); Ruling Date: February 3, 2011; Ruling No. 2011-2892; 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 the Department of Corrections
Ruling No. 2011-2892
February 3, 2011

The Department of Transportation (the agency) seeks a compliance ruling regarding the grievant's September 14, 2010 grievance. Specifically, the agency seeks permission to administratively close the grievance due to the grievant's alleged noncompliance.

FACTS

The grievant initiated an expedited grievance on September 14, 2010. The second step respondent sent her response to the grievant via certified mail and email on October 8, 2010. The grievant did not acknowledge receipt of the email, and the certified letter was returned to the agency on November 2, 2010. As such, on November 22, 2010, the agency sent the grievant a letter describing the grievant's alleged noncompliance, notifying the grievant she had five workdays to respond, and informing the grievant the agency would seek administrative closure if the grievant did not come back into compliance. The grievant apparently did not respond. Therefore, on January 3, 2011, the agency sent a second letter to the grievant indicating they had not received her response and they would consider her grievance administratively closed if the grievant did not respond within five workdays from receipt of the letter. Once again, the grievant apparently did not respond. The agency has now sought a compliance ruling from this Department seeking permission to administratively close the September 14th 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 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

¹ *Grievance Procedure Manual* § 6.3.

² *Id.*

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

An agency may not close an allegedly noncompliant grievance without first seeking a ruling from the EDR Director. Before seeking such a ruling, the agency must inform the grievant, in writing, of the noncompliance and allow the grievant five workdays after receipt of the written notice to correct the noncompliance. If EDR finds that the grievant is out of compliance, EDR will order the grievant to correct the noncompliance. If it is not corrected within the designated timeframe, the agency may close the grievance.⁴

The grievant apparently has not advanced her grievance despite agency attempts to notify her of her noncompliance. Accordingly, she is not in compliance with the grievance procedure. Therefore, **within five workdays of receipt of this ruling**, the grievant is ordered to respond to the agency and state whether she intends to advance or conclude her September 21st grievance. If the grievant does not respond within five workdays of receipt of this ruling, the agency may administratively close the grievance.

This Department's rulings on matters of compliance are final and nonappealable.⁵

Claudia T. Farr
Director

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 *Grievance Procedure Manual* § 6.3; *Frequently Asked Grievance Questions*, FAQ # 29, at <http://www.edr.virginia.gov/faqs.htm>. Agencies may still close grievances without requesting such a ruling if initiation noncompliance is raised. *Grievance Procedure Manual* § 6.2; *Frequently Asked Grievance Questions*, FAQ # 29, at <http://www.edr.virginia.gov/faqs.htm>.

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