

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: April 4, 2011; Ruling No. 2011-2935; Agency: Department of Behavioral Health and Developmental Services; Outcome: Grievant Not In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of Behavioral Health and Developmental Services
Ruling No. 2011-2935
April 4, 2011

The Department of Behavioral Health and Developmental Services (the “agency”) seeks a compliance ruling regarding the grievant’s December 14, 2010 expedited grievance. Specifically, the agency seeks permission to administratively close the grievance due to the grievant’s alleged noncompliance.

FACTS

On December 14, 2010, the grievant initiated an expedited grievance that challenged a Group III Written and discharge. The second step respondent sent a response to the grievant on or about December 22, 2010. The grievant received the letter on December 23, 2010. On or about January 7, 2011, when the grievant failed to advance his grievance, the agency sent the grievant a letter dated January 5, 2011 which described the grievant’s alleged noncompliance, notifying the grievant he had five workdays to respond, and informed the grievant the agency would seek administrative closure if the grievant did not come back into compliance. The grievant apparently has not responded. The agency now requests a compliance ruling from this Department seeking permission to administratively close the December 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

In this case, the grievant appears to have failed to advance or conclude his grievance within five workdays of receiving the second resolution step response. Moreover, the agency appears to have attempted to notify the grievant of his noncompliance, but the grievant has not advanced or concluded his grievance.

As the grievant has apparently failed to advance or conclude his grievance in a timely manner, he has failed to comply with the grievance procedure.⁴ This Department therefore orders the grievant to correct his noncompliance **within ten work days of the date of this ruling** by notifying his human resources office in writing that he wishes either to conclude his grievance or advance the grievance to the agency head for a qualification determination. If he does not, the agency may administratively close the grievance without any further action on its part. The grievance 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.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 See *Grievance Procedure Manual* § 2.4.

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