

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: January 27, 2012; Ruling No. 2012-3215; Agency: Department of Corrections; 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
EDR Ruling No. 2012-3215
January 27, 2012

The Department of Corrections (“agency”) has requested a compliance ruling related to the grievant’s August 11, 2011 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 11, 2011, the grievant initiated a grievance with the agency. The agency returned the grievance to the grievant asserting that it was untimely. The grievant subsequently asked this Department for a compliance ruling regarding the timeliness of the grievance. In a September 20, 2011 ruling this Department ruled that the grievance was, in part, timely. EDR Ruling No. 2012-3081 instructed that the “grievance package must be returned to the first step respondent who must provide a substantive response within 5-workdays of receipt of this ruling.”

On November 22, 2011, the agency mailed a certified letter of noncompliance to the grievant, indicating that she had been “instructed that in order to continue with your grievance, you should submit Form A and documents within five (5) workdays of receipt of notification to the Step 1 respondent.” Documents provided by the agency indicate that the grievant received the notice of noncompliance on November 28, 2011. The agency asserts that the grievant has taken no action.

Since more than five workdays have elapsed since the agency’s notification to the grievant of her alleged noncompliance, and the grievant has not yet advanced or concluded her grievance, the agency seeks a compliance ruling allowing it to administratively close the 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

¹ *Grievance Procedure Manual* § 6.3.

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 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 her grievance within five workdays of receiving EDR Ruling No. 2012-3081. Moreover, the agency notified the grievant of her noncompliance, but the grievant has not advanced or concluded her grievance.

As the grievant has apparently failed to advance or conclude her grievance in a timely manner, she has failed to comply with the grievance procedure. This Department therefore orders the grievant to correct her noncompliance **within ten work days of the date of this ruling** by notifying her human resources office in writing that she wishes either to conclude or advance the grievance.⁴ If she does neither, 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

If either party has questions regarding the grievance process, they may contact the toll-free AdviceLine at 1-888-232-3842.

Claudia T. Farr
Director

² *See 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 Because it is not entirely clear where the original grievance currently resides, we are requiring the grievant to inform HR in writing that she desires to move her grievance forward. If the grievance is in the grievant's possession, we are additionally requiring that she forward it to the first step respondent during the 10 workday timeframe. Should the grievance be in the possession of the agency, the agency shall provide a substantive response to the grievant within 5-workdays of receipt of the grievant's written intention to continue with her grievance.

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