

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: July 24, 2012;
Ruling No. 2013-3386; Agency: Department of Behavioral Health & Developmental
Services; Outcome: Grievant Not in Compliance.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Employment Dispute Resolution

COMPLIANCE RULING

In the matter of the Department of Behavioral Health and Developmental Services
EDR Ruling Number 2013-3386
July 24, 2012

The Department of Behavioral Health and Developmental Services (“agency”) has requested a compliance ruling related to the grievant’s May 18, 2012 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 May 18, 2012, the grievant initiated a grievance with the agency. The agency held the second resolution step meeting with the grievant on May 24, 2012. On May 25, 2012, the agency mailed the second resolution step response to the grievant by certified mail. This mailing was claimed by the grievant on May 31, 2012. On June 29, 2012, the agency mailed a letter of noncompliance to the grievant by certified mail, indicating the agency had not received a response from the grievant. Additionally, the agency requested a response from the grievant within five workdays upon receipt of the noncompliance letter, and indicated the agency would administratively close the May 18th grievance if no response was received. This mailing was claimed by the grievant on July 5, 2012.

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 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

¹ *Grievance Procedure Manual* § 6.3.

² *See id.*

opposing party fails to correct the noncompliance within this five-day period, the party claiming noncompliance may seek a compliance ruling from EDR, 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 the agency's second resolution step response, as required by the grievance procedure.⁴ 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. The Office of Employment Dispute Resolution at the Department of Human Resource Management 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 to the agency head for a qualification determination. If she 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).

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



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³ While in cases of substantial noncompliance with procedural rules the grievance statutes grant EDR the authority to render a decision on a qualifiable issue against a noncompliant party, EDR favors having grievances decided on the merits rather than procedural violations. Thus, EDR 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, EDR 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 §§ 2.2-1202.1(5); 2.2-3003(G).