

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: July 25, 2012;  
Ruling No. 2013-3387; Agency: Department of Conservation and Recreation;  
Outcome: Agency in Compliance.



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

**COMPLIANCE RULING**

In the matter of the Department of Conservation and Recreation  
Ruling Number 2013-3387  
July 25, 2012

The grievant seeks a compliance ruling from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management regarding his grievance with the Department of Conservation and Recreation (the agency). The grievant alleges that the agency head has failed to comply with the time limits set forth in the grievance procedure and seeks clearance of his record.

**FACTS**

The grievant states the agency qualified his grievance for a hearing on June 1, 2012. The agency states it delayed sending the grievance for appointment of a hearing officer due to a pending investigation against the grievant's supervisor. The agency states that it was still considering whether to remove the action taken against the grievant entirely depending on the resolution of the investigation. On July 12, 2012, the grievant sent the agency head a notice of noncompliance for failing to send the grievance for a hearing. EDR received the grievance from the agency for appointment of a hearing officer on July 23, 2012, the same day the grievant requested this ruling.

**DISCUSSION**

While the grievant is correct that the agency was under a time limit to send the grievance to EDR for appointment of a hearing officer,<sup>1</sup> the agency has now complied with that requirement. Thus, by sending the grievance package to EDR, the agency has rendered moot any issue of noncompliance for its earlier failure to act. Further, the relatively minor delay in this case would not constitute substantial noncompliance with the grievance procedure.<sup>2</sup> EDR also

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<sup>1</sup> *Grievance Procedure Manual* § 4.2.

<sup>2</sup> 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. *See* Va. Code § 2.2-3003(G). 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.

finds no indication of any bad faith on the part of the agency warranting relief on the merits of the case (i.e., dropping the case against the grievant and automatically clearing his record). Indeed, it appears the agency had very good reasons for its delay in sending the grievance due to a pending investigation against the grievant's supervisor.

While the agency's actions in this case do not warrant a finding on the merits at this time, EDR notes that the grievance process is intended to provide the parties with an expeditious way to resolve workplace issues and therefore adherence to the five workday rule is crucial. The noncompliance provisions of the grievance process are not, and were never intended to be, a mechanism to allow the parties to extend the five workday rule. As such, EDR does not condone any party failing to comply with the time limits set forth in the grievance process and strongly cautions that repeated disregard for the five workday rule could result in a decision against the noncompliant party.<sup>3</sup>

EDR's rulings on matters of compliance are final and nonappealable.<sup>4</sup>



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<sup>3</sup> See, e.g., EDR Ruling Nos. 2003-049 and 2003-053, 2007-1470, 2007-1420.

<sup>4</sup> See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).