

Issue: Compliance – Grievance Procedure (Resolution Steps); Ruling Date: October 18, 2012; Ruling No. 2013-3453; Agency: Department of Game and Inland Fisheries; Outcome: No Ruling – Moot.



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

COMPLIANCE RULING

In the matter of the Department of Game and Inland Fisheries
Ruling Number 2013-3453
October 18, 2012

The grievant has asked for a compliance ruling from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management. She alleges that the response provided at the first step of her grievance does not comply with the provisions of the *Grievance Procedure Manual* because it was issued by someone other than the appropriate first step-respondent.

FACTS

In the grievant's August 2, 2012 grievance, the grievant received a first step response from the member of management who allegedly engaged in the grieved conduct. This individual was reportedly not the grievant's supervisor. As such, the grievant alleges that she did not receive a first step response from the correct first step-respondent as defined under the grievance procedure. The grievant submitted a ruling request, dated October 9, 2012, to EDR to address the alleged noncompliance. There is no indication that the grievant submitted a notice of noncompliance to the agency head and allowed five workdays for the agency to address or correct the alleged noncompliance.

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 first notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance.² If the party fails to correct the alleged noncompliance, the complaining party may request a ruling from EDR.³

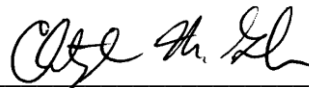
¹ *Grievance Procedure Manual* § 6.

² *Grievance Procedure Manual* § 6.3.

³ *Id.*

In this case, the grievant's request for a compliance ruling is premature because the grievant has not shown that she first notified the agency head in writing of the alleged violation and given the agency five workdays to correct the purported noncompliance, as required by the grievance procedure.⁴ Further, since reviewing the grievant's ruling request, the agency has issued a new first step response from the grievant's former supervisor, who would be the correct first step-respondent. As such, because the agency has corrected its noncompliance, the ruling request is now moot. For both of these reasons, EDR has no basis to address the noncompliance matter further.

EDR's rulings on matters of compliance are final and nonappealable.⁵ We would further note that based on our review of the process in this case there appears that there may be confusion on both sides of this grievance as to how it has been and/or should be handled. We would encourage both parties to contact EDR with any questions about the grievance process on the AdviceLine at 1-888-232-3842.



Christopher M. Grab
Senior Consultant
Office of Employment Dispute Resolution

⁴ *Id.*

⁵ Va. Code §§ 2.2-1202.1(5); 2.2-3003(G).