

Issue: Compliance - Grievance Procedure (Second Step Meeting); Ruling Date: September 20, 2016; Ruling No. 2017-4416; Agency: Department of Veterans Services; Outcome: Agency 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 Veterans Services
Ruling Number 2017-4416
September 20, 2016

The grievant has requested a compliance ruling regarding her August 21, 2016 grievance with the Department of Veterans Services (the "agency"). The grievant claims that the agency failed to comply with the grievance procedure in handling its response to the grievance at the second management resolution step.

FACTS

On or about August 21, 2016, the grievant initiated a grievance with the agency, challenging a Group I Written Notice issued to her on August 3, 2016. On or about September 1, 2016, the first resolution step response was issued to the grievant, denying her requested relief. The grievant, using the Grievance Form A, chose to advance her grievance to the second resolution step. After reviewing the grievance, the second step-respondent scheduled a meeting between himself and the grievant at Agency Location A, because Location A was halfway between the grievant's work location and his own work location. Both the grievant and the second step-respondent would be driving approximately three hours each way to reach Agency Location A, and the meeting was scheduled in the middle of the day to allow for the lengthy driving time.

The grievant objected to the meeting being held at Agency Location A. She indicates that she intends to bring an observer to the meeting, and her observer is an employee of a different state agency, who lives and works near the grievant's regular work location. She asserts that requiring her observer to add approximately six hours of travel time to the time he would need to otherwise take to accompany her to the second step meeting is unreasonable. Additionally, the grievant states that she has three witnesses willing to attend the meeting on her behalf.¹ Those witnesses all reside near the grievant's work location and would not be able to travel to Agency Location A. Accordingly, the grievant now seeks a compliance ruling from this office, requesting that EDR determine that the second resolution step meeting be held in the locality in which grievant is employed.

¹ Email correspondence between the grievant and the second step-respondent indicates that the grievant has been told no witnesses would be allowed at the second resolution step meeting. EDR will address the issue of witnesses in this ruling as well.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.² 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.³ If the 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.⁴

Here, the grievant asserts that the proposed second resolution step meeting does not satisfy the requirements of the grievance procedure because the meeting should be held in the locality in which she is employed. The *Grievance Procedure Manual* is silent on this subject. The grievant argues that because the *Grievance Procedure Manual* and the Code of Virginia provide that grievance hearings "shall be held in the locality in which the employee is employed . . ."⁵ meetings required under the grievance procedure should also be held in the locality in which the grievant is employed. She indicates that requiring her observer and witnesses to travel to Location A would deter their participation in the process, thus rendering the second step meeting less effective. In response, the agency asserts that, should the second step-respondent travel to the grievant's work location for the meeting, he would incur overnight travel expenses and approximately twelve hours of driving time total. The agency contends that, in this instance, meeting halfway between the two locations would be the most effective use of agency resources and employee time.

While EDR declines to adopt a rule that second resolution step meetings should always be held in the locality where the grievant is employed, here, that result is the most appropriate when all circumstances are considered. First, the *Grievance Procedure Manual* provides that "either party may call witnesses" at the second resolution step meeting.⁶ EDR finds that the agency is out of compliance with the grievance procedure in directing the grievant otherwise. Because this case involves unique circumstances where the grievant's witnesses (as well as her

² *Grievance Procedure Manual* § 6.3.

³ *See id.*

⁴ 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.

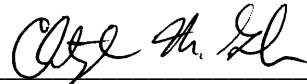
⁵ Va. Code § 2.2-3004(E); *Grievance Procedure Manual* § 5.2.

⁶ *Grievance Procedure Manual* § 3.2.

observer) are not agency employees, EDR agrees that it would not be reasonable to require those witnesses to travel a considerable distance to attend a meeting on the grievant's behalf, and doing so would have a chilling effect on the grievance procedure and the early resolution of employee grievances. Thus, while EDR does not find noncompliance by the agency in its attempt to schedule the second resolution step meeting at Location A, we agree with the grievant that her work location (or somewhere nearby, if applicable) is the most appropriate for the meeting in this instance.⁷

CONCLUSION

For the reasons discussed above, EDR concludes that the agency failed to comply with the grievance procedure with respect to preventing the grievant from calling witnesses at her second step resolution meeting. Further, while there is no basis to find noncompliance regarding the location of the meeting, EDR finds that, in this case, the meeting should be held in the locality where the grievant is employed. Thus, the agency is directed to schedule a second resolution step meeting with the grievant in the locality where she regularly works **within five workdays of receipt of this ruling**. If the meeting cannot be scheduled within that time, then a meeting date at a later time should at least be agreed to within the five workdays. EDR's rulings on matters of compliance are final and nonappealable.⁸



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⁷ If there are mutually agreeable alternate means by which to resolve this issue with minimal travel for all involved, such as, for instance, closely located video teleconferencing sites, that could be worked out directly by the parties and be acceptable under the grievance procedure.

⁸ See Va. Code §§ 2.2-1202.1(5); 2.2-3003(G).