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COMPLIANCE RULING

In the matter of the University of Virginia Medical Center
Ruling Number 2022-5395
April 13, 2022

The University of Virginia Medical Center (the “agency” or “University”) has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) to challenge the hearing officer’s decision not to rescind a witness order in Case Number 11784. For the reasons discussed below, EDR has no basis to disturb the hearing officer’s actions at this time.

In EDR Ruling Number 2022-5373 (the “prior ruling”), EDR previously assessed the agency’s objections to having the CEO testify as a witness. EDR continues to observe that we do not see a compelling need for the CEO herself to be a witness in this grievance hearing. However, as stated in the prior ruling, the hearing officer has identified potentially relevant evidence that could come from the testimony of the CEO, including statements made during employee meetings about the religious exemption process, information about the relevant agency policy and its application, and information about how the grievant’s particular exemption request was reviewed and assessed. While the agency appears to have produced recordings of the employee meetings and policy documentation that would likely address some of these topics, evidence (and potential testimony) of how the grievant’s religious exemption requests were reviewed and assessed or by whom remain unclear.

In the prior ruling, EDR suggested that if the agency were to identify other more knowledgeable witnesses, the appropriate analysis of the parties’ respective needs and burdens may change as to which witnesses the hearing officer should order to appear. However, the only alternative witness the agency has identified is now a former employee. While we could presume that this individual has knowledge about the relevant University policies based on their former title, the University has not indicated whether this witness has direct knowledge of or involvement in the denial of the grievant’s religious exemption. Indeed, it appears that the University objects to identifying those individuals who were involved in evaluating and deciding to deny the grievant’s religious exemption based, in part, to protect the individuals’ privacy. While the hearing officer has understandably overruled the University’s objections on this point, EDR has been provided no information to assess whether there are better witnesses available than those identified or why the former employee is the most relevant and proper witness to testify to these issues. Again, in the absence of such information, EDR does not have a basis to find that the hearing officer has abused

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his discretion. More importantly, as the individual identified by the University is now a former employee over whom the University does not have control, EDR is reluctant to interfere in the hearing officer's discretion to direct the rescission of the witness order for the CEO in favor of a former employee witness.

A hearing officer has the authority to issue witness orders.¹ As long as a hearing officer's orders are consistent with this authority and witness testimony provisions of the grievance procedure, the determination of which witnesses are ordered to appear at the hearing is within the hearing officer's discretion.² For example, a hearing officer has the authority to exclude irrelevant or immaterial evidence.³ EDR has the authority to review and render final decisions on issues of hearing officer compliance with the grievance procedure, including the issuance of witness orders. A hearing officer's decision on such a matter will be disturbed only if it appears that the hearing officer has abused their discretion or otherwise violated a grievance procedure rule.

EDR continues to observe that there may be better and more efficient alternatives to having the CEO testify in this case. EDR is hopeful that other witnesses with direct knowledge about the facts of the case, preferably those currently employed with the University, can be identified. Based upon the discussion above, the agency's ruling request does not present a basis for EDR to find that the hearing officer has abused his discretion.

EDR's rulings on matters of compliance are final and nonappealable.⁴

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¹ Va. Code § 2.2-3005(C)(3); *Rules for Conducting Grievance Hearings* § III(E).

² *See, e.g.*, EDR Ruling Nos. 2021-5285, -5286.

³ *See* Va. Code § 2.2-3005(C)(5). Evidence is generally considered relevant when it would tend to prove or disprove a fact in issue. *See Owens-Corning Fiberglas Corp. v. Watson*, 243 Va. 128, 138, 413 S.E.2d 630, 636 (1992) (“We have recently defined as relevant ‘every fact, however remote or insignificant, that tends to establish the probability or improbability of a fact in issue.’” (citation and internal quotation marks omitted)); *Morris v. Commonwealth*, 14 Va. App. 283, 286, 416 S.E.2d 462, 463 (1992) (“Evidence is relevant in the trial of a case if it has any tendency to establish a fact which is properly at issue.” (citation omitted)).

⁴ Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).