

Issue: Compliance – Hearings (other issue); Ruling Date: May 7, 2018; Ruling No. 2018-4716; Agency: Department of Social Services; Outcome: Hearing Officer in Compliance.



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

**COMPLIANCE RULING**

In the matter of the Department of Social Services  
Ruling Number 2018-4716  
May 3, 2018

The grievant has requested a compliance ruling from the Office of Equal Employment and Dispute Resolution (“EEDR”) at the Department of Human Resource Management in relation to the hearing officer’s denial of her request for a continuance in her upcoming grievance hearing with the Department of Social Services (the “agency”).

FACTS

On or about January 25, 2018, the grievant initiated a grievance challenging the agency’s issuance of a Group II Written Notice with a ten-workday suspension. After the grievance advanced through the management resolution steps, the agency qualified the grievance for a hearing and requested the appointment of a hearing officer. On April 23, 2018, EEDR appointed a hearing officer to hear this case, and the hearing was scheduled for May 31, 2018. After the hearing was scheduled, the grievant requested a continuance from the hearing officer, arguing that she needed additional time to find an advocate to represent her at the hearing. The hearing officer denied the grievant’s request for a continuance. The grievant requested a compliance ruling from EEDR on May 1, 2018, asserting that a continuance is necessary for her to obtain an advocate for the hearing. The continuance she has requested would essentially delay the hearing until at least September 2018.

DISCUSSION

The grievance procedure states that grievance hearings should be held within thirty-five calendar days of the hearing officer’s appointment.<sup>1</sup> A hearing officer may “grant reasonable requests for extensions or other scheduling or deadline changes if no party objects to the request.”<sup>2</sup> In cases where a party objects, “the hearing officer may only grant extensions of time [f]or just cause.”<sup>3</sup> Opinions of the Court of Appeals of Virginia further support the position that a hearing officer’s decision on a motion for continuance should be disturbed only if: (1) the

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<sup>1</sup> *Rules for Conducting Grievance Hearings* § III(B).

<sup>2</sup> *Id.*

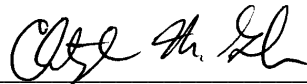
<sup>3</sup> *Id.*

hearing officer's refusal to grant the extension was an abuse of discretion;<sup>4</sup> and (2) the objecting party suffered specific prejudice by the refusal to grant the continuance."<sup>5</sup> In addition, courts have found that the test for whether there was an abuse of discretion in denying a continuance "is not mechanical"; it depends mainly upon the reasons presented at the time that request is denied.<sup>6</sup> While not dispositive for purposes of the grievance procedure, the standard set forth by the courts is nevertheless instructive and has been used by EEDR in past rulings.<sup>7</sup>

EEDR has the authority to review and render final decisions on issues of hearing officer compliance with the grievance procedure, including whether the hearing officer abused his discretion by failing to grant a party's request for a continuance.<sup>8</sup> However, in light of the rules and standards set forth above, EEDR will only disturb a hearing officer's decision to deny a request for a continuance if it appears that (1) circumstances beyond the party's control existed justifying such an extension; (2) the hearing officer's refusal to grant the extension of time was an abuse of his discretion; and (3) the objecting party suffered undue prejudice.

A party "may be represented by legal counsel, another individual of choice, or themselves" at a grievance hearing.<sup>9</sup> In this case, it does not appear that any circumstances beyond the grievant's control exist with regard to her representation at the hearing such that a continuance would be necessary. While the grievant's concerns about obtaining an advocate are understandable, there is no indication that the hearing officer abused his discretion or otherwise erred in denying the grievant's request to postpone the hearing.

EEDR's rulings on matters of compliance are final and nonappealable.<sup>10</sup>



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<sup>4</sup> "Abuse of discretion" in this context has been defined by the courts as "an unreasoning and arbitrary insistence or expeditiousness in the face of a justifiable request for delay." *United States v. Bakker*, 925 F.2d 728, 735 (4th Cir. 1991) (quoting *Morris v. Slappy*, 461 U.S. 1, 11-12 (1983)).

<sup>5</sup> *Cf. Venable v. Venable*, 2 Va. App. 178, 181, 342 S.E.2d 646, 647 (1986) ("The decision whether to grant a continuance is a matter within the sound discretion of the trial court. Abuse of discretion and prejudice to the complaining party are essential to reversal." (citing *Autry v. Bryan*, 224 Va. 451, 454, 297 S.E.2d 690, 692 (1982))); *see also Bakker*, 925 F.2d at 735 ("to prove that the denial of the continuance constitutes reversible error, [the objecting party] must demonstrate that the court abused its 'broad' discretion and that he was prejudiced thereby." (citing *United States v. LaRouche*, 896 F.2d 815, 823-25 (4th Cir. 1990))).

<sup>6</sup> *See LaRouche*, 896 F.2d at 823.

<sup>7</sup> *See, e.g.*, EDR Ruling No. 2008-2005.

<sup>8</sup> Va. Code § 2.2-1202.1(5).

<sup>9</sup> *Rules for Conducting Grievance Hearings* § IV(A).

<sup>10</sup> Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).