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COMPLIANCE RULING

In the matter of the Department of Behavioral Health and Developmental Services
Ruling Numbers 2019-4935
May 23, 2019

The Department of Behavioral Health and Developmental Services (the “agency”) has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”)¹ at the Department of Human Resource Management in relation to the hearing officer’s order for the production of documents in Case Number 11321. The agency alleges that it is not required to produce a copy of the video to the grievant’s attorney because it has made it available for viewing.

The disciplinary action at issue in Case Number 11321 is a Group II Written Notice for a supervisor allegedly “plac[ing] his arms around a female employee and twirl[ing] her around saying “there’s my girl,” which was witnessed by patients and employees. The agency plans to offer the video of the incident at hearing. The agency made the video available to the grievant’s attorney, and it was reviewed on or about May 17, 2019. The grievant’s attorney has sought to obtain a copy of the recording prior to the hearing, which the hearing officer has directed to occur. The agency objects on the basis of security and patient privacy, citing to EDR Ruling Number 2012-3359.

The hearing in Case Number 11321 is scheduled for May 24, 2019. EDR received the agency’s request for a compliance ruling on May 22, 2019. Due to the short timeframe, EDR is unable to fully address the compliance matter in this case prior to the hearing.² Accordingly, EDR defers the question to be addressed in any subsequently filed request for administrative review of the hearing decision (or other post-hearing request) to the extent it is relevant at that time.

¹ The Office of Equal Employment and Dispute Resolution has separated into two office areas: the Office of Employment Dispute Resolution and the Office of Equity, Diversity, and Inclusion. While full updates have not yet been made to the *Grievance Procedure Manual* to reflect this change, this Office will be referred to as “EDR” in this ruling. EDR’s role with regard to the grievance procedure remains the same.

² The question raised in the agency’s compliance ruling request is not directly answered by reference to EDR Ruling Number 2012-3359. For example, if a video sought contains no information that would impact concerns such as security or patient privacy, there may not be a basis to find just cause for withholding such a video. EDR is unable to resolve the factual dispute between the parties as to what the video shows in the timeframe available. Further, even if EDR were to find none of those bases warranted withholding the video, the relative interests of the parties would need to be weighed. EDR has also received no statement from the grievant addressing this matter.

The agency apparently requested a continuance from the hearing officer to pursue this compliance ruling, which the hearing officer denied. The agency's ruling request does not appear to request a continuance at this time. However, EDR does not find that a disruption to the previously scheduled hearing at this late date is warranted. Given the lack of complexity of the incident (based on the description in the Written Notice), combined with the fact that the grievant's attorney has reviewed the video in advance of hearing and that the video will be available for the hearing, EDR can find little prejudice to either party created by proceeding with the hearing at this time. If either party objects to conditions on the video's introduction at hearing and presents evidence of prejudice, the hearing officer could, for example, order an additional opportunity to present evidence following the hearing or an additional hearing date to address the impact on the grievant's hearing preparation, if any.

EDR's rulings on matters of compliance are final and nonappealable.³



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³ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).