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COMPLIANCE RULING

In the matter of the Virginia Marine Resources Commission
Ruling Number 2019-4952
July 12, 2019

The Virginia Marine Resources Commission (the “agency”) has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management¹ regarding the hearing officer’s order granting the grievant’s request for a continuance in Case Number 11360.

Following a prehearing conference with the parties and their legal counsel on May 22, 2019, the hearing officer scheduled the hearing in Case Number 11360 for July 25, 2019. The grievant requested a continuance on July 3, 2019, stating that he needed to retain a new attorney and “secure relevant witnesses.” The grievant’s original legal counsel confirmed to the hearing officer that she had withdrawn from representing the grievant. The agency, through its counsel, objected to the grievant’s request for a continuance. The hearing officer subsequently issued an order on July 9, 2019, in which she granted the grievant’s request for a continuance, directed the grievant to provide contact information for his new attorney to her and the agency no later than July 22, 2019, and provided dates on which she is available in August and September to reschedule the hearing. The agency has now requested a compliance ruling from EDR, alleging that there was no basis for the hearing officer to grant the grievant’s request for a continuance and that continuing the hearing to a later date places a significant burden on the agency.

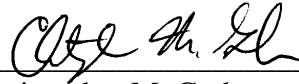
There is nothing in the *Grievance Procedure Manual* or the *Rules for Conducting Grievance Hearings* that prohibits a hearing officer from rescheduling a hearing; indeed, a hearing officer is expressly given the authority to grant extensions for just cause.² EDR has the authority to review and render final decisions on issues of hearing officer compliance with the grievance procedure, including the granting or denying of continuances. A hearing officer’s decision regarding a hearing continuance will be disturbed only if (1) it appears that the hearing officer has abused her discretion or otherwise violated a grievance procedure rule, and (2) the

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 See *Rules for Conducting Grievance Hearings* § III(B); see also Va. Code § 2.2-3005(C) (granting hearing officers the authority to “[d]ispose of procedural requests”).

objecting party can show prejudice.³ Here, where the grievant requested additional time to secure a new attorney to represent him at the hearing after the withdrawal of his original legal counsel, EDR has no basis to dispute the hearing officer's determination that a continuance was appropriate. While the agency has presented reasonable concerns of the impacts of the rescheduled hearing, the hearing officer has the authority to weigh the competing interests and determine an appropriate outcome. Decisions such as this will, at times, result in prejudice to a party. However, EDR cannot find that the hearing officer has violated the grievance procedure or abused her discretion in granting the request for a continuance. Accordingly, EDR will not further intervene in this matter.

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



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³ See EDR Ruling No. 2013-3450; EDR Ruling No. 2012-3067; *cf.* *Venable v. Venable*, 2 Va. App. 178, 181, 342 S.E.2d 646, 648 (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)).

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