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COMPLIANCE RULING

In the matter of the Virginia Department of Transportation
Ruling Number 2020-5016
November 20, 2019

The Virginia Department of Transportation (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 11416.

The hearing officer had previously scheduled the hearing in Case Number 11416 for November 22, 2019. After noting his appearance on November 12, 2019, the grievant’s counsel requested a continuance on November 13, 2019, stating that he was not available on the scheduled hearing date (i.e., November 22). The agency, through its representative, objected to the grievant’s request for a continuance during a conference call held on November 15, 2019. The hearing officer overruled the agency’s objection and granted the continuance to reschedule the hearing date. During the call, the parties and the hearing officer attempted to find an available date for all involved. The first date the parties could find was February 3, 2020. The hearing officer accepted that date as the new hearing date.

The agency has now requested a compliance ruling from EDR, challenging the basis for the hearing officer’s decision to grant the grievant’s request to reschedule the hearing. The agency also describes the burden created by delaying the hearing until February and seeks, in the alternative, a hearing with a different hearing officer, if appropriate, to obtain an earlier hearing date.

The *Grievance Procedure Manual* and the *Rules for Conducting Grievance Hearings* permit a hearing officer to grant extensions and continuances of hearing dates 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

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”).

hearing officer's decision regarding a hearing continuance will be disturbed only if (1) it appears that the hearing officer has abused his discretion or otherwise violated a grievance procedure rule, and (2) the objecting party can show prejudice.³ Here, EDR has no basis to dispute the hearing officer's determination that a continuance to reschedule the hearing was appropriate.

Unfortunately, and through no apparent fault of the hearing officer or the parties, their schedules did not allow for rescheduling the hearing at a time that was close to the original hearing date. EDR finds that both parties have an important interest in having this matter resolved in a more expeditious fashion than waiting for a hearing in February. While this ruling was pending, EDR reached out to the representatives for both parties to determine a common date of availability. The earliest date both parties are available is December 18, 2019. While EDR would not ordinarily reassign a case to a different hearing officer in this situation, such action is justified based on the particular circumstances presented by this case. Accordingly, EDR will reassign Case Number 11416 to a new hearing officer who is available to hold the hearing on December 18, 2019. Separate correspondence with additional details will be forthcoming.

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).