

Issue: Compliance – Grievance Procedure (Other Issue); Ruling Date: January 29, 2007; Ruling #2008-1918; Agency: Virginia Department of Health; Outcome: Grievant In Compliance.



*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*

**COMPLIANCE RULING OF DIRECTOR**

In the matter of the Department of Health  
Ruling No. 2008-1918  
January 29, 2008

The grievant seeks additional time to comply with this Department's (EDR's) order in EDR Ruling Number 2008-1820 concerning her September 8, 2005 and September 30, 2005 grievances. For the reasons discussed below, the grievant's request is granted.

FACTS

On December 18, 2007, EDR issued Ruling Number 2008-1820. In that Ruling, this Department ordered, in part, that the grievant was to provide EDR, within 30 calendar days of the *date of the ruling*, "justification in the form of current medical documentation indicating that she continues to be under the care of a health care provider or psychiatrist and is incapable of participating in a grievance hearing, if that is indeed the case." EDR originally mailed this Ruling to the grievant on December 18, 2007. However, on January 2, 2008, EDR received the envelope with the Ruling back from the post office indicating that it was not deliverable as addressed. EDR then mailed the Ruling to another address of the grievant's on record on January 2, 2008. That mailing was again returned to EDR because the forwarding notice had expired. Another address was then discovered for the grievant, and the Ruling mailed again on January 8, 2008. The grievant appears to have received the Ruling by that mailing. However, because of the delay in receipt, the grievant seeks additional time to comply with EDR's order.

DISCUSSION

EDR Ruling Number 2008-1820 gave the grievant 30 calendar days from the date of the Ruling (December 18, 2007) to provide a response. Because of the problems this Department encountered in sending the grievant a copy of the Ruling, the grievant was deprived of at least three weeks of the 30 days in which she had to respond. Thus, the grievant will be given **30 calendar days** from the date of the successful mailing of the Ruling (January 8, 2008) to comply with EDR Ruling Number 2008-1820. As such, **by February 7, 2008**, the grievant is required to provide this Department with justification in the form of current medical documentation indicating that she continues to be under the care of a health care provider or psychiatrist and is incapable of participating in a

grievance hearing, if that is indeed the case. Simply providing documentation that indicates the grievant continues to be under the care of a health care provider or psychiatrist is not sufficient. The documentation must indicate that the grievant is incapable of participating in a grievance hearing. If EDR does not receive adequate documentation, the hearings coordinator shall re-appoint a hearing officer and the hearing shall be reopened. If the grievant submits documentation sufficient to warrant continuation of the stay, this Department will continue to stay the grievance until the grievant indicates that she has been released or certified by her health care provider or psychiatrist as capable to participate in a grievance hearing. Once the grievant is capable to proceed, she must provide the necessary notification to this Department and the agency **within five workdays.**<sup>1</sup>

This Department's rulings on matters of compliance are final and nonappealable.<sup>2</sup>

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Claudia T. Farr  
Director

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<sup>1</sup> This order is identical to that provided in EDR Ruling No. 2008-1820. The only change is allowing the grievant additional time to respond.

<sup>2</sup> Va. Code §§ 2.2-1001(5), 2.2-3003(G).