

Issue: Compliance – Grievance Procedure (Other Issue); Ruling Date: March 5, 2008; Ruling #2008-1952; Agency: 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. 2008-1952
March 5, 2008

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 apparently received the Ruling by that mailing, but, because of the delay in receipt, sought additional time to comply with EDR's order.

In EDR Ruling 2008-1918, this Department gave the grievant an additional 30 calendar days (or until February 7, 2008) to provide 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. On February 6, 2008, the grievant provided this Department with a note from her treatment provider indicating that she is currently "unable to attend the Grievance Hearing." The agency has objected to the sufficiency of the grievant's documentation, and it has asked that the grievant's pending grievances be dismissed or, in the alternative, that no additional stays be granted.

While this Department agrees that the documentation provided by the grievant is sparse, we find that it is sufficient to meet the requirements set forth in EDR Rulings 2008-1820 and 2008-1918. Accordingly, this Department will stay the re-opening of the hearing for another 90 calendar days. At the conclusion of this 90-day period, however, the Hearings Program Director will re-appoint a hearing officer and the hearing will be reopened. Any argument that the hearing should be stayed for just cause at that time shall be heard and addressed by the hearing officer.

This Department's rulings on matters of compliance are final and nonappealable.¹

Claudia T. Farr
Director

¹ Va. Code §§ 2.2-1001(5), 2.2-3003(G).