

Issue: Compliance – Grievance Procedure (Hearings); Ruling Date: June 13, 2008;  
Ruling #2008-2045; Agency: Department of Health; Outcome: No Ruling.



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of the Department of Health  
Ruling No. 2008-2045  
June 13, 2008

The procedural history of the grievant's September 8, 2005 and September 30, 2005 grievances and the related hearing process is long and unique.<sup>1</sup> Following an extended stay of the grievances, and upon a ruling request from the agency, EDR issued Ruling No. 2008-1820, which ordered, in part, that the grievant was to provide EDR "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." While the documentation provided by the grievant was "sparse," EDR nevertheless stayed the re-opening of the hearing for another 90 calendar days.<sup>2</sup> As provided in EDR Ruling No. 2008-1952, at the conclusion of that 90-day period, the Hearings Program Director will re-appoint a hearing officer and the hearing will be reopened. This Department has now received correspondence from the agency indicating that 90 calendar days have passed and requesting, in part, the immediate appointment of a hearing officer.<sup>3</sup> When this correspondence was received, the Hearings Program Director was already taking steps to process the appointment of such a hearing officer. Therefore, a hearing officer will now be appointed to hear the grievant's grievances in forthcoming correspondence from this Department.

This Department's rulings on matters of compliance are final and nonappealable.<sup>4</sup>

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Claudia T. Farr  
Director

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<sup>1</sup> See EDR Ruling No. 2008-1820.

<sup>2</sup> EDR Ruling No. 2008-1952.

<sup>3</sup> The agency also asserted, again, that the grievances should be closed due to the "unheard of delay" and prejudice to the agency. While this Department agrees the delay in this case has been uncommon, the agency's arguments have been addressed in prior rulings and there is no basis to rule otherwise here. See, e.g., EDR Ruling No. 2008-1820. Moreover, both the agency and the grievant have been prejudiced by the lapse of time in that both sides, presumably, will have lost familiarity with the facts of the case. The agency has presented no other evidence of specific prejudice in this case. Furthermore, the prejudice the agency describes does not compare to the prejudice of closing of a grievance that has been stayed, admittedly for a long time, at least initially based on reasons that were no fault of the grievant's, her medical condition. See EDR Ruling No. 2006-1358.

<sup>4</sup> Va. Code §§ 2.2-1001(5), 2.2-3003(G).