

Issue: Compliance – Grievance Procedure (Other Issue); Ruling Date: April 11, 2011; Ruling No. 2011-2945; Agency: Department of Motor Vehicles; Outcome: No Ruling – need response from AHO.



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of the Department of Motor Vehicles  
Ruling Number 2011-2945  
April 11, 2011

The grievant has requested that this Department intervene in Case Number 9514. For the reasons set forth below, this Department will not consider action until the hearing officer responds to the grievant's request to move his hearing date.

FACTS

The grievant was issued a Group II Written Notice, which he received on August 30, 2010. The grievant grieved the Notice on September 28, 2010. The grievance was qualified for hearing and a hearing officer appointed on February 10, 2011. A pre-hearing conference was convened and the parties agreed to a hearing date of May 5, 2011. On March 1, 2011, the grievant requested that the hearing be moved to a sooner date because the wait was causing him a high level of stress. On March 15, 2011, the hearing officer responded by saying that he had not received a response from the agency to the grievant's request and that in the absence of a response, he could not unilaterally move the date. The hearing officer went on to state that if the grievant could arrange a conference call with the agency advocate (or a substitute), he would be glad to try to reschedule for an earlier date. On March 24, 2011, the agency advocate (who had been on medical leave) responded noting that the grievant agreed to the May 5<sup>th</sup> date and that moving it up would essentially pose a hardship. The hearing officer has not responded to grievant's request since the agency's March 24<sup>th</sup> response.

DISCUSSION

By statute, this Department has been given the power to establish the grievance procedure, promulgate rules for conducting grievance hearings, and "[r]ender final decisions ... on all matters related to procedural compliance with the grievance procedure."<sup>1</sup> If the hearing officer's exercise of authority is not in compliance with the

---

<sup>1</sup> Va. Code § 2.2-1001(2), (3), and (5).

grievance procedure, this Department does not award a decision in favor of a party; the sole remedy is that the action be correctly taken.<sup>2</sup>

Here, the hearing officer has not yet taken any action adverse to the grievant. Once the hearing officer responds to the grievant, the grievant can renew this request if dissatisfied with the outcome. We understand the grievant's position regarding the stress that waiting for hearing poses. Further, he is commended for initially agreeing to allow the hearing date to be set beyond the prescribed 35 day timeframe, due to the agency representative's "exigent medical reasons." However, we are also compelled to note that given the grievant's agreement to the May 5<sup>th</sup> hearing date and the agency's argument that it would essentially be prejudiced by moving the date up, it is difficult to see how a hearing officer's refusal to move the agreed upon date would constitute an abuse of discretion, at least based on the limited information before this Department. However, the hearing officer must review all the pertinent facts and make his determination, stating the reasons for his decision. If either party objects to the hearing officer's determination, they may request a ruling from this Department.

---

Claudia T. Farr  
Director

---

<sup>2</sup> See *Grievance Procedure Manual* § 6.4(3).