

Issue: Compliance – Grievance Procedure (Hearings); Ruling Date: June 15, 2011; Ruling No. 2011-2962; Agency: Department of Corrections; Outcome: Grievant In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Corrections
Ruling Number 2011-2962
June 15, 2011

The grievant has requested a compliance ruling to stay the grievance process as related to her three pending grievances with the Department of Corrections (“agency”). The grievant asserts that her current medical condition precludes her from adequately participating in the grievance process. For the reasons below, the grievant’s request is granted.

FACTS

The grievant has three pending grievances. The Department of Employment Dispute Resolution (the “Department” or “EDR”) qualified and consolidated all three grievances for hearing and the agency subsequently requested the appointment of a hearing officer.

Prior to the appointment of a hearing officer, the grievant contacted this Department seeking a stay in the grievance process. She alleges that her medical condition makes her unable to handle the process of preparing for the hearing and that she needs additional time for her condition to improve so that she may adequately participate in the hearing. Specially, the grievant requested this Department to delay appointing a hearing officer for at least three months.

The agency objects to the stay and asks this Department to schedule the hearing without further delay. It alleges that a stay “will adversely affect the agency’s ability to provide the evidence necessary” for the hearing. In particular, one of the agency’s important witnesses has retired from the agency and may not be available for a hearing at a later date.

DISCUSSION

Because a hearing officer has not yet been appointed, a stay must be requested of the EDR Director. This Department will generally grant a stay in the grievance process if a party has just cause for the request, the delay will not materially prejudice the other

party, and the duration of the requested stay is not excessive.¹ In this case, the grievant's physician has certified in writing to this Department that the grievant does not have the mental capacity at this time to utilize the grievance procedure. Furthermore, the grievant's physician indicated that the grievant may lack this capacity for up to eight additional months.

This Department finds at this time that an eight month stay would be excessive and could potentially prejudice the other party's ability to call certain witnesses at hearing. The grievant has requested at least a three month stay. Because the grievant has presented sufficient evidence of "just cause" for her inability to adequately participate in the grievance process, and in order to balance both parties' interests in a full and fair opportunity to present their cases at hearing, this Department will stay the grievance process until **September 1, 2011**. **By September 1, 2011, the grievant must contact this Department and indicate whether she is mentally capable of advancing her grievance to the hearing phase.** Should the grievant assert that she is still incapable of fully participating in her grievance hearing, she may request an extension from this Department, but she will be required to show why just cause exists. Furthermore, this Department is compelled to note that the grievance process cannot remain open-ended and stayed indefinitely. These grievances were initiated over a year ago. We are cognizant of the difficulty experienced by the grievant, but are also aware of the difficulty and potential prejudice that continued delay could impose on the agency. Accordingly, further delays are not guaranteed and could become increasingly less likely with the passage of time. Hence, if the grievant's mental incapacity continues, this Department may require the grievant to authorize a representative to represent her interests at hearing.

This Department's rulings on matters of compliance are final and nonappealable.²

Claudia T. Farr
Director

¹ See EDR Ruling No. 2010-2648.

² See Va. Code §§ 2.2-1001(5), 2.2-3003(G).