

Issue: Compliance – Grievance Procedure (Hearings); Ruling Date:  
September 22, 2011; Ruling No. 2012-3093; Agency: Department of  
Corrections; Outcome: Grievant Not in Compliance.



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of the Department of Corrections  
Ruling Number 2012-3093  
September 22, 2011

The grievant has requested an extension of the previously granted stay in her three pending grievances with the Department of Corrections (“the agency”). For the reasons below, the grievant’s request is denied.

FACTS

The grievant has three pending grievances. This Department (“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 alleged that her medical condition made 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. The grievant previously requested this Department to delay appointing a hearing officer for at least three months.

Over the agency’s objection, this Department granted the grievant’s request and stayed the grievance process until September 1, 2011.<sup>1</sup> The grievant was instructed in EDR Ruling No. 2011-2962 to “contact this Department [by September 1, 2011] and indicate whether she is mentally capable of advancing her grievance to the hearing phase.” On September 6, 2011, this Department received the grievant’s communication, through an agent, requesting an extension of the stay of at least three months. The grievant has presented no documentation to support her request.

DISCUSSION

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.<sup>2</sup> Based on the grievant’s previous request and her physician’s certification, a three-month stay was granted. However, in EDR Ruling No. 2011-2962, this Department required the grievant to contact EDR **by**

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<sup>1</sup> EDR Ruling No. 2011-2962.

<sup>2</sup> See EDR Ruling No. 2010-2648.

**September 1, 2011**, to indicate whether she is capable of advancing her grievance. She did not do so. Moreover, the grievant's late request is unsupported by any additional documentation to support an extension of the stay for just cause. The grievant was additionally instructed in EDR Ruling No. 2011-2962 that if an extension was requested, she would be required to show why just cause exists. Having not satisfied these requirements, the grievant's request is denied. We cannot ignore the agency's stated objections of potential prejudice in light of the grievant's failure to support a timely request for an extension. These grievances were initiated over a year ago, and continued delay could prejudice the agency's ability to call certain witnesses at hearing.

The stay is lifted as of the date of this ruling and Case Numbers 9449, 9560, and 9561 will be assigned to a hearing officer. We note that if the grievant lacks mental capacity to adequately participate in the hearing, her interests may be represented by a duly authorized representative.

This Department's rulings on matters of compliance are final and nonappealable.<sup>3</sup>

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Claudia T. Farr  
Director

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<sup>3</sup> See Va. Code §§ 2.2-1001(5), 2.2-3003(G).