

Issue: Compliance – Grievance Procedure (Hearings); Ruling Date: October 5, 2012;  
Ruling No. 2013-3450; Agency: Virginia Department of Health; Outcome: Hearing  
Officer in Compliance.



*COMMONWEALTH of VIRGINIA*  
*Department of Human Resource Management*  
*Office of Employment Dispute Resolution*

**COMPLIANCE RULING**

In the matter of the Department of Health  
Ruling Number 2013-3450  
October 5, 2012

The grievant has requested a ruling regarding the hearing officer's rescheduling of the hearing date in Case Number 9898 and extension of the time period for exchange of exhibits in granting a continuance request from the Department of Health (the agency). For the reasons discussed below, we have no basis to intervene.

FACTS

The hearing in Case Number 9898 was originally scheduled for October 5, 2012. The agency sought to continue the matter because it appeared a key witness may not be available due to a medical issue. The hearing officer granted the continuance, rescheduling the hearing to October 24, 2012, and extending the deadline for exchange of evidence to October 18<sup>th</sup>. The grievant objects to the continuance because "there could be a risk of evidence and/or witness tampering if the date for submission of evidence is extended." The grievant also requests that any new evidence "refuting or supporting existing evidence" be disallowed. It is presumed the grievant made similar objections to the hearing officer during the pre-hearing conference call addressing the continuance request.<sup>1</sup>

DISCUSSION

While the grievant asserts that the hearing officer's actions are not consistent with the grievance procedure, there is nothing in the *Grievance Procedure Manual* or the *Rules for Conducting Grievance Hearings* that prohibits a hearing officer from rescheduling a hearing or moving the previously set date for the exchange of exhibits. Indeed, a hearing officer is expressly given the authority to grant extensions for just cause.<sup>2</sup> EDR has the authority to review and render final decisions on issues of hearing officer compliance with the grievance procedure including the granting or denying of continuances, but a hearing officer's decision regarding a hearing continuance will only be disturbed if (1) it appears that the hearing officer has abused his discretion or otherwise violated a grievance procedure rule; and (2) the objecting party can show

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<sup>1</sup> See *Grievance Procedure Manual* § 6.4.

<sup>2</sup> See *Rules for Conducting Grievance Hearings* § III(B); see also Va. Code § 2.2-3005(C) (granting hearing officers the authority to "[d]ispose of procedural requests").

prejudice.<sup>3</sup> Here, where the availability of a key witness was in question, we have no basis to dispute the hearing officer's determination that a continuance was proper.

In addition, we are not persuaded by the grievant's stated concerns as to the continuance request. Although evidence and/or witness tampering are serious issues, whether any such incidents occur seems unrelated to when the exhibit exchange date is set. The hearing officer has the authority to address tampering concerns if they arise regardless of when the hearing is scheduled. Further, while the grievant may be understandably frustrated that additional evidence could be presented with the extended exhibit exchange date, her concerns do not warrant EDR's intervention. For example, even if the hearing had occurred on October 5<sup>th</sup>, if the agency wanted to present additional evidence that was not previously exchanged to respond to the grievant's case, it would have the ability to do so on rebuttal.<sup>4</sup> In short, we find no prejudice in moving the exhibit exchange date to correspond with the newly rescheduled hearing date.

### CONCLUSION

Based on the foregoing, this Office, the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management, has no basis to intervene in this matter. There has been no violation of the grievance procedure and the hearing officer has not abused his discretion in granting the continuance request. EDR's rulings on matters of compliance are final and nonappealable.<sup>5</sup>



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<sup>3</sup> See EDR Ruling No. 2002-213; *cf.* *Venable v. Venable*, 2 Va. App. 178, 181, 342 S.E.2d 646, 648 (1986) (“The decision whether to grant a continuance is a matter within the sound discretion of the trial court. Abuse of discretion and prejudice to the complaining party are essential to reversal.”) (citing *Autry v. Bryan*, 224 Va. 451, 454, 297 S.E.2d 690, 692 (1982)).

<sup>4</sup> See EDR Ruling No. 2010-2537 at n.6.

<sup>5</sup> See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).