

ORDER GRANTING CONTINUANCE AND RESETTING HEARING FOR TWO DAYS

IN THE MATTER OF THE APPEAL OF:

PHAZARIA KOONCE, Appellant,

vs.

DEPARTMENT OF SAFETY, DENVER SHERIFF'S DEPARTMENT,
and the City and County of Denver, a municipal corporation, Agency.

Appellant has moved for a continuance of the hearing now set for Nov. 26, 2013, and resetting the hearing for two days. The Agency objects to the motion for continuance.

As grounds for the motion, Appellant states that on Nov. 19th, the Agency produced the Denver Police Department file of its year-long investigation of Appellant, consisting of 500 pages and 28 DVDs, in response to the subpoena duces tecum served on Nov. 14, 2013. The Agency has listed 16 witnesses in its amended prehearing statement, and Appellant has listed an additional two witnesses. Appellant claims she was retaliated against over a two-year period in a number of adverse actions involving several Agency officials. Based on the size of the DPD investigative file, it appears that the evidence in this matter will be complex and lengthy. A split-day hearing disadvantages both sides by not permitting a cohesive presentation of evidence.

The Agency argues in its objection that Appellant delayed in its request for the file. The Agency objected to its production in October, necessitating a motion to compel discovery. The Agency also objected to the issuance of the subpoena to produce the file. It is clear that Appellant required an order to compel the documents, and that an order was not an option until this appeal was filed. Appellant did not unduly delay discovery, and the Agency was within its rights to object to it.

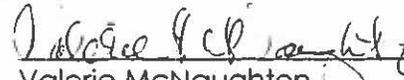
The Agency also argues that a continuance would violate the clear language of CSR § 19-42. On the contrary, this hearing was set for the 60th day after resolution of the second order to show cause.

Appellant alleges that she will be prejudiced in her ability to present her case if the continuance is not granted. The Agency argues that it will be prejudiced by resetting the hearing because its witnesses have already planned their schedules with this date in mind. This factor is present in every case where the issue of resetting a hearing is raised. In balancing these interests, I find that Appellant's right to a fair hearing outweighs the witnesses' scheduling concerns. It appears to be an almost physical impossibility to review the volume of relevant material presented in a manner adequate to prepare evidence and rebuttal, in addition to other trial preparation, within the four remaining days before the hearing. Since this is the first requested continuance, and a two-day hearing appears appropriate based on the volume of evidence to be presented, the motion will be granted.

Order

Appellant's motion for continuance is GRANTED. The hearing will be reset on or before Monday, Nov. 25, 2013 for two consecutive days based on the availability of the parties and witnesses.

DONE November 21, 2013.



Valerie McNaughton
Career Service Hearing Officer

I certify that on Nov. 21, 2013, I delivered a correct copy of this Order to the following in the manner indicated:

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