OAH 80-3100-34912

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF VETERANS AFFAIRS

In the Matter of David A. Kurz,

Petitioner

vs.

West Central Area Schoolds, ISD 2342,

Respondent.

ORDER DENYING MOTION FOR CONTINUANCE

The above-entitled matter is scheduled for a hearing before Administrative Law Judge LauraSue Schlatter on April 16, 2018.

Joshua M. Heggem, Pemberton, Sorlie, Rufer, Kershner, PLLP, represents West Central Area Schools, ISD 2342 (School District). Marshall H. Tanick, Meyer, Njus, Tanick, PA, represents David A. Kurz (Petitioner).

On March 14, 2018, the Petitioner filed a request for a continunace of the hearing due to Petitioner's significant deterioration in health. On March 19, 2018, the School District filed a letter opposing the Petitioner's request for a continuance.

In the Second Prehearing Order in this matter, the Administrative Law Judge continued the hearing scheduled for February 5, 2018, to April 16, 2018. Because April 16, 2018, is the statutory deadline for holding a hearing in this matter, pursuant to Minn. Stat. § 197.481 (2016), the Second Prehearing Order also provided that no further continuances would be granted.[1]

Based upon the submissions of counsel and the hearing record,

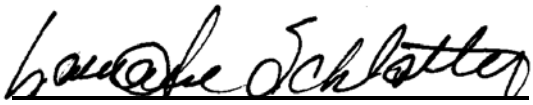
IT IS HEREBY ORDERED:

1. The Petitioner's request for a continuance is **DENIED.**

[1] Second Prehearing Order (Jan. 25, 2018).

2. The hearing in this matter remains scheduled for **April 16, 2018,** at **9:30 a.m.** All deadlines outlined in the January 25, 2018, Second Prehearing Order remain in effect.

Dated: March 22, 2018



LAURASUE SCHLATTER
Administrative Law Judge

MEMORANDUM

The Petitioner's request for a continuance acknowledges that his current condition has existed for a period of time, but asserts that it has become significantly worse and "surgical intervention" is a possibility. His physician's letter states that he is on long-term disability and not currently able to perform his job duties, with a steroid injection scheduled for May 12, 2018. Depending on the outcome of that injection, the physician's letter states there is "the possibility of surgical consultation."[2] The continuance request, which was dated March 14, 2018, states that a report from the Petitioner's rehabilitation therapist was expected within days. No further information has been provided as of the time of the filing of this Order.

The School District points out that the physician's letter did not support the Petitioner's claim that his condition has worsened significantly, and that there is nothing to demonstrate "good cause"[3] to continue the hearing a second time in this matter. The School District cites the statutory requirement that the case be heard within 120 days of the service of the petition, which in this case was December 11, 2017. In addition, the School District maintains that further delay of this matter prejudices the School District because it creates uncertainty and burdens the School District's operations. Finally, the School District argues that starting and stopping hearing preparations adds to the cost of the hearing process.

The School District's claims of prejudice and expense are unconvincing. The assertion that the School District will be prejudiced in some way by a delay is vague. While an employee's challenge to his termination will leave the employer in an uncertain position regarding that employee's status for a period of time, that uncertainty is not prejudicial and is a part of the School District's role as an employer. Similarly, to the extent that the School District finds itself in litigation from time to time with a current or former employee, there are costs to litigation. Sometimes, continuances for good cause are part of those costs. If the Petitioner is unable, for medical reasons, to participate in his own hearing, that would constitute good cause to continue the hearing.

[2] M. Tanick letter requesting continuance (Mar. 14, 2018), attached letter of James E. Andrews, Jr., D.O.
[3] *See* Minn. R. 1400.7500 (2017).

But the Administrative Law Judge agrees that the Petitioner has not demonstrated good cause exists to justify a continuance. Petitioner failed to make clear that his condition has deteriorated significantly. He has been unable to work for many months due to his medical condition. Nor has the Petitioner demonstrated that he cannot attend a one-day hearing, which is scheduled to occur near his home. Accommodations, such as more frequent breaks, and more comfortable sitting, standing, or reclining positions, can be provided to the Petitioner at the hearing. The Petitioner has not requested any accommodations. Unless the Petitioner is able to provide additional documentation that he cannot be present at an April 16, 2018, hearing due to his medical condition, the hearing will proceed as scheduled.

L. S.