

B. POSTPONEMENT OR CONTINUANCE OF HEARING

OVERVIEW:

Upon a party's motion pursuant to § [2423.21](#), an ALJ may continue a hearing either from day-to-day or adjourn it to a later date or to a different place. After issuance of complaint, motions to change the date of the hearing, i.e., postponement must be made immediately upon discovery of the circumstance which, in the judgment of the moving party, warrants a change in the date of hearing.

OBJECTIVE:

To provide guidance concerning circumstances when it is appropriate to request a postponement of the hearing or continuance, the process of requesting a postponement or continuance, and the opposition to a request for a continuance.

1. PRACTICE:

- a. *When is a request to postpone the hearing or a request to continue the hearing made and to whom?*
 - i. Postponements--Before the hearing to the Chief ALJ.
 - ii. Continuance--At the hearing to the presiding ALJ.
- b. *For what reason?*
 - i. When important witness(es) are unavailable for the scheduled hearing date;
and
 - ii. When counsel is unavailable.

- c. *The grant of a continuance is within the discretion of the ALJ:*

ALJ's decision is subject to challenge only if it can be shown that there has been an abuse of discretion in denying a continuance.

See National Labor Relations Board, 46 FLRA No. 14, 46 FLRA 107, 108 n.2 (1992) (NLRB) (ALJ did not abuse discretion in denying GC's request for a continuance to recall, for the purpose of rebuttal testimony, a particular witness who testified during the GC's case-in-chief);

See also Department of the Navy, Navy Resale System, Field Support Office, Commissary Store Group, Norfolk, Virginia, 16 FLRA No. 37, 16 FLRA 257, 257 n.2 (1984) (no prejudicial error where ALJ denied request for continuance but granted Respondent's alternative request that the record remain open in order that a deposition be taken of the unavailable witness); and Professional Air Traffic Controllers Organization, MEBA, AFL-CIO, 7 FLRA No. 10, 7 FLRA 34, 42-43 (1981) (no prejudicial error where ALJ denied Respondent's request for continuance and Respondent failed to indicate an intention to present evidence on particular issues, or to make an offer of proof).

2. PROCESS OF REQUESTING A CONTINUANCE:

- a. *Specify on the record all the reasons why the continuance is needed;*
- b. *Specify the prejudice which may result if the continuance is not granted; and*
- c. *Make an offer of proof if the ALJ denies the continuance at hearing.*

For example: "Your Honor, if a continuance were granted, the GC could produce Witness X who would testify as follows . . . regarding Issue X
. . . ."

3. OPPOSITION TO A REQUEST FOR A CONTINUANCE, CONSIDER:

- a. *Whether the grounds stated for such a continuance are valid given the considerations of additional government cost.*
- b. *Whether the continuance could have been sought at an earlier point in time.*

RESERVED |