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**COMPLIANCE and CONSOLIDATION RULING**

In the matter of the Department of Health  
Ruling Number 2023-5487  
December 9, 2022

This ruling addresses whether a grievance filed with the Department of Health (the “agency”), which is currently pending for a hearing, may be consolidated with a future grievance the grievant may initiate in light of his recent separation from the agency. For the reasons discussed below, the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) finds that consolidation of these grievances into a single hearing is appropriate and practicable.

FACTS

On or about July 16, 2022, the grievant filed a grievance with the agency challenging his receipt of a Group II Written Notice. The grievance proceeded through the management resolution steps, and the agency head ultimately qualified the grievance for a hearing. EDR appointed a hearing officer, who scheduled a hearing on the matter for December 1, 2022. On November 22, 2022, the agency terminated the grievant’s employment pursuant to additional written notices issued on that date. Noting the possibility that the grievant could initiate a second grievance to challenge his termination, the agency requested a continuance for the hearing officer to delay the hearing then scheduled for December 1, and that EDR consolidate the existing grievance with any additional grievance the grievant may file within the 30-calendar-day period provided by the grievance procedure.<sup>1</sup> The hearing officer granted the agency’s continuance request pending further developments. The grievant has objected to the hearing officer’s continuance and argues that consolidation is not appropriate.

DISCUSSION

Approval by EDR in the form of a compliance ruling is required before two or more grievances may be consolidated in a single hearing. Moreover, EDR may consolidate grievances for hearing without a request from either party.<sup>2</sup> EDR strongly favors consolidation and will

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<sup>1</sup> *Grievance Procedure Manual* §§ 2.2, 2.4.

<sup>2</sup> *Grievance Procedure Manual* § 8.5.

consolidate grievances when they involve the same parties, legal issues, policies, and/or factual background, unless there is a persuasive reason to process the grievances individually.<sup>3</sup>

The grievant objects to continuance and consolidation on grounds that the previously-scheduled grievance hearing will now be delayed. He argues that this result encourages agencies to implement disciplinary terminations against employees shortly before their grievance hearings in order to gain a negotiation advantage. He maintains there was no reason why the December 1 hearing could not have gone forward.

EDR finds that consolidation of the July 16, 2022 grievance with any forthcoming dismissal grievance is appropriate. These grievances would involve the same grievant and appear likely to share common themes, claims, and witnesses. Upon review of all seven written notices that have been issued to the grievant, the grievances would relate to conduct by the grievant that resulted in similar and/or related disciplinary actions. Further, we find that consolidation is not impracticable in this instance and is more efficient than requiring all participants to prepare for two separate hearings. Particularly in light of the timing of the grievant's termination and his active decision period for filing a dismissal grievance, we conclude that these considerations are well within the "limited circumstances" that may merit consolidation after a hearing officer has been appointed.<sup>4</sup>

We find no basis to disturb the hearing officer's decision to grant an open-ended continuance on November 22, 2022. Prior to that decision, the agency had presented information tending to suggest not only that a second hearing might be necessary but also that the first hearing could become moot. The hearing officer's determination that these circumstances constituted just cause for a continuance appears to have been a reasonable exercise of his discretion, and there is no indication that the grievant objected to that determination until December 2 – at which time it was no longer possible to hold the hearing as originally scheduled.

While the grievant questions the agency's motives in terminating his employment shortly before the scheduled hearing, we have no basis at this time to find that the agency's disciplinary actions were taken in bad faith. We further do not agree that either the hearing continuance or the prospective consolidation of grievances deprives the grievant of any due process. Should the grievant exercise his right to challenge his termination via the grievance process, the agency will bear the burden at a new hearing to prove that each of the seven written notices was warranted and appropriate, and the grievant will have the opportunity to present any relevant defenses.

For the reasons described above, the pending July 16, 2022 grievance will be consolidated with any forthcoming dismissal grievance for a single hearing.<sup>5</sup> Upon receipt of any such dismissal grievance, EDR will advise the parties and the hearing officer accordingly and circulate updated

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<sup>3</sup> *See id.*

<sup>4</sup> *See Grievance Procedure Manual* § 8.5.

<sup>5</sup> Pursuant to the fee schedule established by EDR's Hearings Program Administration policy, consolidated hearings shall be assessed a full fee for the first grievance and an additional half fee for the second grievance. *See* EDR Policy 2.01, *Hearings Program Administration*, Attach. B. If EDR determines that a case is so complex that it is the equivalent of multiple hearings, EDR may direct the agency to pay up to an additional \$2100 for the hearing. *Id.*

appointment correspondence. The hearing officer should then arrange a pre-hearing conference with the parties to reschedule a new hearing. In the event the grievant elects not to file a dismissal grievance, the parties are encouraged to keep the hearing officer informed of their intentions with respect to the initial grievance of July 16, 2022.

EDR's rulings on compliance are final and nonappealable.<sup>6</sup>

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<sup>6</sup> See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).