

Issue: Consolidation of grievances for a single hearing; Ruling Date: January 25, 2018; Ruling No. 2018-4670; Agency: Virginia Department of Transportation; Outcome: Consolidation denied.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Equal Employment and Dispute Resolution

CONSOLIDATION RULING

In the matter of the Virginia Department of Transportation
Ruling Number 2018-4670
January 25, 2018

This ruling addresses the grievant's request to consolidate two grievances regarding her employment with the Virginia Department of Transportation (the agency). For the reasons discussed below, EEDR finds that consolidation of these grievances into a single hearing is not appropriate and the grievant's request is denied.

FACTS

The two grievances at issue are 1) a September 25, 2017 grievance challenging the agency's issuance of a Group I Written Notice, which was qualified by the agency for a hearing and appointed to a hearing officer by EEDR on January 3, 2018, and 2) a grievance challenging an unsatisfactory performance evaluation issued to the grievant on or about December 1, 2017. The grievant, through counsel, requests that these matters be consolidated and placed "on hold" until thirty days past the outcome of the grievant's re-evaluation period. The agency objects to the request.

DISCUSSION

Approval by the Office of Equal Employment and Dispute Resolution (EEDR) at the Department of Human Resource Management in the form of a compliance ruling is required before two or more grievances may be consolidated in a single hearing. Moreover, EEDR may consolidate grievances for hearing without a request from either party.¹ EEDR strongly favors consolidation and will 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.² However, in this instance, there are compelling reasons not to grant the consolidation request.


The grievance challenging the performance evaluation is proceeding through the management resolution steps at the present time. The agency, in its response to the grievant's request for consolidation, asserts that the performance evaluation will not qualify for a grievance hearing. While it is certainly possible that EEDR may qualify this grievance for a hearing, the

¹ *Grievance Procedure Manual* § 8.5.

² *See id.*

fact remains that qualification is speculative at this time. While it appears that the grievances could both relate to a pattern of allegedly unsatisfactory behavior, the grievant's request does not demonstrate that the grievances are so closely linked that consolidation is necessary or that prejudice will occur without consolidation. Indeed, an unnecessary delay affecting both parties is the most likely prejudice to occur if the grievant's request is granted. Further, the *Rules for Conducting Grievance Hearings* provide that "[a]fter a hearing officer has been appointed, EEDR will accept requests for consolidation for hearing only in limited circumstances."³ In this instance, EEDR does not find that extenuating circumstances outweigh the compelling reasons not to grant the consolidation request.⁴

As such, the grievant's request for consolidation of her two grievances is denied. The September 25, 2017 grievance shall proceed to hearing as scheduled by the assigned hearing officer. EEDR's rulings on compliance are final and nonappealable.⁵



Christopher M. Grab
Director
Office of Equal Employment and Dispute Resolution

³ *Rules for Conducting Grievance Hearings* § III(C).

⁴ The *Rules* provide that "[g]enerally, the hearing should occur within 35 calendar days after the hearing officer is appointed. . . the hearing officer in his or her discretion may grant reasonable requests for extensions. . . if no party objects to the request." *Rules for Conducting Grievance Hearings* § III(B). Here, the agency has objected to such an extension.

⁵ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).