

Issue: Consolidation of grievances for a single hearing; Ruling Date: November 16, 2016; Ruling No. 2016-4264, 2016-4265; Agency: Department of Behavioral Health and Developmental Services; Outcome: Consolidation denied.



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

CONSOLIDATION RULING

In the matter of the Department of Behavioral Health and Developmental Services
Ruling Numbers 2016-4264, 2016-4265
November 16, 2015

This ruling addresses the request from the Department of Behavioral Health and Developmental Services (the agency) to consolidate the dismissal grievances of Grievant 1 and Grievant 2. For the reasons discussed below, EDR finds that consolidation of these grievances into a single hearing is not appropriate and the agency's request is denied.

FACTS

The two grievances at issue, both dated October 20, 2015, primarily concern the issuance of two separate Group III Written Notices with termination to Grievant 1 and Grievant 2. Following EDR's receipt of a Form A Dismissal Grievance from each grievant, the agency has asked for appointment of a hearing officer in these matters, and requests that the two grievances be consolidated and heard at a single hearing.¹ The grievants, via counsel, object to the request.

DISCUSSION

Approval by the Office of Employment Dispute Resolution (EDR) 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, EDR may consolidate grievances for hearing without a request from either party.² EDR 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.³ However, in this instance, there are compelling reasons not to grant the consolidation request.

¹ The agency's request for consolidation also asks that the grievances proceed to hearing based upon two amended Written Notices that "more clearly state the nature of the [alleged] offenses." To this, the grievants' counsel argues that two Group II Written Notices would be the appropriate sanctions based upon the revisions made by the agency, and asks that EDR compel the agency to change the level of offense issued to each grievant. EDR has no authority to compel the agency to take such an action. The cases shall proceed to hearing based upon the Written Notices revised on November 14, 2015 and counsel for the grievants may raise any argument at hearing as to the appropriate level of discipline and what effect, if any, the revisions have on the matter. The hearing officer has the authority to reduce each sanction should he or she find it to be warranted by the facts in either case.


² *Grievance Procedure Manual* § 8.5.

³ *See id.*

First, the grievances involve different employees. While the grievances of separate employees can still be consolidated, EDR does so cautiously due to the personnel issues inherently involved in grievances and the potential for discovery of and involvement in confidential matters about a co-worker. Consequently, if there is an objection made by any party to the grievances, EDR is reluctant to grant a consolidation request in the grievances of separate employees. Here, both employees have objected.

In addition, although the disciplinary actions at issue in these grievances appear to arise out of the same course of events, the grievants may wish to raise separate defenses, each potentially implicating the other grievant. It appears that Grievant 1 and Grievant 2 have different role titles, responsibilities, and levels in the chain of command that may indicate different duties with respect to the allegations of misconduct here. In short, outside of the common course of events, the two grievances raise different questions and are not so closely linked that consolidation is procedurally necessary. As such, the agency's request for consolidation of the two October 20, 2015 grievances is denied. These grievances will proceed to separate hearings. A hearing officer will be appointed in each case in forthcoming letters to the applicable parties.

EDR's rulings on compliance are final and nonappealable.⁴



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⁴ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).