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CONSOLIDATION RULING

In the matter of the Department of Professional and Occupational Regulation
Ruling Number 2020-4949
July 2, 2019

This ruling addresses the consolidation of the grievant's five grievances filed with the Department of Professional and Occupational Regulation (the "agency"). For the reasons discussed below, the Office of Employment Dispute Resolution ("EDR") at the Virginia Department of Human Resource Management ("DHRM")¹ finds that consolidation of these grievances into a single hearing is appropriate and practicable.

FACTS

The grievant initiated five grievances with EDR on June 19, 2019. Each grievance separately challenges one of the five following Written Notices, all of which were issued to the grievant on June 10, 2019:

- 1) a Group III Written Notice with termination for an alleged violation of DHRM Policy 1.60, *Standards of Conduct*, for "neglect of duty in [the grievant's] management and leadership role";
- 2) a Group III Written Notice with termination for an alleged violation of DHRM Policy 2.35, *Civility in the Workplace*, due to conduct that "creat[ed] a hostile, intimidating, offensive work environment";
- 3) a Group III Written Notice with termination for an alleged violation of the agency's Code of Ethics, for "undermin[ing] efforts to earn trust and confidence from staff and peers[,] . . . fail[ing] to treat people respectfully and courteously[,] and . . . condon[ing her] own improper activity";
- 4) a Group II Written Notice with termination for an alleged failure to follow agency policy, based on her assignment of duties to a contingent worker; and

¹ The Office of Equal Employment and Dispute Resolution has separated into two office areas: the Office of Employment Dispute Resolution and the Office of Equity, Diversity, and Inclusion. While full updates have not yet been made to the *Grievance Procedure Manual* to reflect this change, this Office will be referred to as "EDR" in this ruling. EDR's role with regard to the grievance procedure remains the same.

- 5) a Group II Written Notice for an alleged failure to follow agency policy, for assigning a contingent worker to be involved in the hiring process for another contingent worker.²

All five Written Notices list an offense date of February 4, 2019, state that “[m]ultiple offense dates occurred during” the grievant’s employment with the agency, and were issued after agency management conducted an investigation of the grievant’s work unit. The agency has requested consolidation of these matters.

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.³ 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.⁴

EDR finds that consolidation of grievant’s five June 19, 2019 grievances is appropriate. These grievances involve the same grievant and could share common themes, claims, and witnesses. The grievances relate to conduct by the grievant that resulted in similar disciplinary actions issued. Further, we find that consolidation is not impracticable in this instance. Therefore, the five grievances are consolidated for a single hearing.⁵ A hearing officer will be appointed in a forthcoming letter.

EDR’s rulings on compliance are final and nonappealable.⁶



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Director
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² Although the fifth Written Notice does not indicate that it was accompanied by termination, the grievant submitted the grievance challenging that Written Notice to EDR with her other grievances. A grievance that does not result in termination would normally proceed through the management steps before proceeding to a hearing. *See Grievance Procedure Manual* § 2.4. For the sake of efficiency in this case, however, EDR will process the fifth grievance as a dismissal grievance, given that the grievant’s termination was the outcome of the five Written Notices collectively.

³ *Grievance Procedure Manual* § 8.5.

⁴ *See id.*

⁵ 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, an additional half fee for the second grievance, and \$400 for each subsequent grievance. *See* EDR Policy 2.01, *Hearings Program Administration*, Attach. B.

⁶ *See* Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).