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CONSOLIDATION RULING

In the matter of the Department of Corrections
Ruling Number 2021-5134
July 17, 2020

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

FACTS

The two grievances at issue are: 1) a May 15, 2020 expedited grievance challenging the agency's issuance of a Group III Written Notice with a disciplinary demotion and pay reduction for alleged unnecessary use of force and false reporting (Case Number 11559), and 2) a May 14, 2020 grievance challenging the agency's issuance of a Group I Written Notice for alleged unsatisfactory work performance (Case Number 11572).¹ 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.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

The grievant objects to the agency's request for consolidation, arguing that separate hearings will "ensure impartiality" because the two grievances will be addressed independently of one another. Having carefully reviewed the grievance documents and the parties' arguments, EDR

¹ EDR received the second grievance after the first (expedited) grievance, despite its having been initiated one day earlier than the first grievance, because the management steps for the second grievance took longer to complete prior to qualification than for the first grievance.

² *Grievance Procedure Manual* § 8.5.

³ *See id.*

concludes that consolidation of the May 14 and 15, 2020, grievances is appropriate. These grievances involve the same grievant and could share common themes, claims, and witnesses. Although the disciplinary actions to be addressed were issued for different types of misconduct that occurred on different dates, the grievant received both Written Notices within a period of several weeks and filed the grievances on consecutive days. Moreover, it does not appear that addressing both matters in one proceeding will require the hearing to last longer than one day.⁴ Finally, EDR's hearing officers are impartial; consolidation of the grievances will not impact the hearing officer's authority and duty to independently determine whether each Written Notice was warranted and appropriate under the circumstances.⁵ In short, EDR finds that the judicial economy to be gained from consolidation in this case is more substantial than the grievant's understandable desire for separate hearings.

Accordingly, the two grievances are consolidated for a single hearing.⁶ The parties will receive further correspondence from EDR regarding the appointment of a hearing officer for these matters.

EDR's rulings on compliance are final and nonappealable.⁷

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⁴ See *Grievance Procedure Manual* § 5.4 (stating that, in general, “[a] hearing is to last no more than one day”).

⁵ *Rules for Conducting Grievance Hearings* §§ II, VI(B)(1).

⁶ 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.

⁷ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).