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CONSOLIDATION RULING

In the matter of the Department of Corrections
Ruling Number 2020-5010
November 25, 2019

This ruling addresses the consolidation of the grievant's five 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")¹ finds that consolidation of these grievances into a single hearing is appropriate and practicable.

FACTS

The five grievances at issue in this case are:

- 1) a September 26, 2019 grievance challenging the agency's issuance of a Group I Written Notice for allegedly "demonstrat[ing] a pattern of disrespectful, unprofessional, and uncivil behavior" in violation of state and agency policy;
- 2) a second September 26, 2019 grievance challenging the agency's issuance of a second Group I Written Notice for allegedly "fail[ing] to follow a supervisor's instructions, engage in constructive dialogue with supervisors, and acknowledge and follow through on coaching and/or instruction related to performance correction, enhancement, and/or development";
- 3) a November 20, 2019 dismissal grievance challenging the agency's issuance of a Group I Written Notice for alleged abuse of state time;
- 4) a second November 20, 2019 dismissal grievance challenging the agency's issuance of a Group II Written Notice for allegedly "continu[ing] to demonstrate a pattern of inappropriate conduct toward management"; and
- 5) a third November 20, 2019 dismissal grievance challenging the agency's issuance of a second Group II Written Notice for allegedly "continu[ing] to demonstrate a pattern of failure to follow instructions, perform assigned tasks, and communicate effectively and constructively."

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.

The three Written Notices challenged in the grievant's three dismissal grievances were accompanied by termination, based on the grievant's accumulation of disciplinary action.² Both the agency and the grievant have requested consolidation of these matters.³

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.⁴ 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.⁵

EDR finds that consolidation of the five above-described grievances is appropriate. These grievances involve the same grievant and could share common themes, claims, and witnesses. The grievances relate to an alleged pattern of behavior 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.⁶ A hearing officer will be appointed in a forthcoming letter.

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



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Director
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² DHRM Policy 1.60, *Standards of Conduct*, at 7-9 (stating that the issuance of “[a] second active Group II Notice normally should result in termination,” and that “[a] Group II Notice in addition to three active Group I Notices normally should result in termination”).

³ Prior to her termination, the grievant filed an additional (sixth) grievance with the agency, challenging management actions arising out of a reorganization that occurred in her department. The grievant has requested a qualification ruling from EDR to determine whether that grievance should proceed to a hearing. If the sixth grievance is also qualified for a hearing, EDR will entertain a further request from the parties to consolidate that matter with the grievances addressed in this ruling.

⁴ *Grievance Procedure Manual* § 8.5.

⁵ *See id.*

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

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