

Issue: Consolidation - consolidation of grievances for purposes of hearing; Ruling Date: August 15, 2001; Ruling #2001-148; Agency: Department of Mental Health, Mental Retardation and Substance Abuse Services; Outcome: Consolidation Not Granted.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Mental Health, Mental Retardation, and Substance Abuse
Services
Ruling Number 2001-148
August 15, 2001

ISSUE:

Should the two grievances filed by the grievant on July 6, 2001 be consolidated for purposes of the hearing?

RULING:

No. This Department holds that consolidation of the two grievances cited above is not appropriate under the circumstances. Thus, the grievances should proceed to hearing separately, but with the same hearing officer. This Department's rulings on matters of compliance are final and nonappealable.¹

EXPLANATION:

On July 6, 2001, the grievant initiated a grievance to challenge a Group I Written Notice issued on June 19, 2001 for unsatisfactory performance. The grievant initiated a second grievance on July 6, 2001, to challenge a Group III Written Notice with termination issued on June 29, 2001, for violation of departmental instructions. The grievant seeks consolidation; the agency opposes consolidation

This Department has long held that grievances may be consolidated by mutual agreement of the parties, or absent such an agreement, by this Department whenever the grievances challenge the same action or series of actions or arise out of the same material facts. EDR strongly favors consolidation and will grant a consolidation request unless there is a persuasive reason to process the grievances individually.² But if consolidation for

¹ See Va. Code § 2.1-116.03(5).

² *Grievance Procedure Manual* § 8.5, page 22.

hearing would be impracticable, the EDR Director may direct that the grievances be heard by the same hearing officer, but with separate hearings and decisions.³

In this case, the grievant contends that consolidation would save time and be more economical. The agency asserts that the two Group Notices are distinct disciplinary actions issued for separate offenses, and therefore should not be consolidated. This Department agrees with the agency's conclusion that the Group I Written Notice for unsatisfactory performance is a separate action from the Group III Written Notice with termination. For that reason, the two grievances are to be heard by the same hearing officer, but with separate hearings and decisions. In the interest of economy, the grievant may request that the hearing officer conduct the hearings consecutively, on the same date, if practicable.

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