

Summary: Qualification; Discipline-Group III/Termination; Ruling Date: June 5, 2002;
Ruling #2002-074; Agency: Department of Corrections; Outcome: not qualified.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Corrections/ No. 2002-074
June 5, 2002

The grievant has requested a ruling on whether his February 26, 2002 grievance with the Department of Corrections (DOC) qualifies for a hearing. The agency denied qualification on the basis that the issues had already been adjudicated by an administrative hearing officer in a March 15, 2002 hearing on a related grievance. The grievant claims that his two grievances were never properly consolidated and requests a hearing on the issues presented in the February 26 grievance. For the following reasons, this grievance does not qualify for a hearing.

FACTS

The grievant was employed as a Corrections Lieutenant with DOC until he was terminated effective February 1, 2002.¹ On January 23, 2002, he had received a Group III Written Notice with recommendation for termination after being charged with petty larceny. On January 28, the grievant filed a grievance challenging that disciplinary action. On January 29, he received a formal letter of termination, effective February 1, based on the recommendation in the January 23 Written Notice. On February 26, he initiated a second grievance, challenging his termination.

The January 28 grievance proceeded to hearing before an administrative hearing officer on March 15. The hearing officer upheld the Written Notice and removal.² On March 27, the grievant requested another hearing on his termination, this one based on the February 26th grievance. DOC initially qualified the grievance for a hearing, then rescinded the qualification after the hearing officer issued his decision upholding the discipline and termination. The grievant requested that his grievance be qualified for a hearing on the issue of termination, since this grievance was never properly consolidated with his earlier grievance.

¹ The grievant was terminated for "acts and behavior of a serious nature unbecoming a Corrections Lieutenant." See January 23, 2002 Written Notice.

² See Decision of Hearing Officer, April 11, 2002.

DISCUSSION

Under the grievance procedure, termination “for unsatisfactory performance” is an issue that automatically qualifies for a hearing.³ Moreover, all formal disciplinary actions (written notices) automatically proceed to hearing.⁴ It is undisputed that the grievant was dismissed effective February 1, 2002 as a result of his January 23, 2002 Group III Written Notice, and that the grievant filed two grievances on these actions. Because one action (the termination) was the result of the other, (the Written Notice) it appears that both actions arose out of the same facts or circumstances.

Under the grievance procedure, only the EDR Director is vested with the authority to consolidate grievances.⁵ If more than one grievance is pending involving the same parties, legal issues, policies, and/or factual background, either party may request consolidation from the EDR Director.⁶ EDR strongly favors consolidation and will grant a consolidation request unless there is a persuasive reason to process the grievances individually.⁷

In this case, neither party requested consolidation, which would have been the better practice. However, the termination had been recommended in the January 23 Written Notice, was approved and communicated to the grievant six days later by the agency, and took effect some six weeks prior to the March 15 hearing. The hearing officer’s decision comprehensively addressed the Written Notice, the recommended termination, and upheld both. Through the January 28 grievance, the recommended termination was challenged, fully adjudicated, and a final decision was rendered by the hearing officer on April 11, 2002. The grievant does not allege nor is there any evidence that he was unaware that the termination itself would be adjudicated at the March 15 hearing or that his case was otherwise prejudiced in any way by the scope of this hearing and resulting decision.⁸ Based on the principals of finality and res judicata,⁹ the Written

³ *Grievance Procedure Manual*, § 4.1(a), page 10.

⁴ *Id.*

⁵ *Grievance Procedure Manual*, § 8.5, page 22.

⁶ *Id.* EDR may also consolidate grievances without a request from either party, if appropriate.

⁷ *Id.*

⁸ The grievant has appealed to this Department the April 11 hearing decision itself, and a ruling on that appeal will be issued later.

⁹ Res judicata is a judicially created doctrine resting upon public policy considerations which favor certainty in the establishment of legal relations, demand an end to litigation, and seek to prevent harassment of parties. *Bates v. Devers*, 214 Va. 667, 670, 202 S.E.2d 917, 920 (1974). It applies “where there is a valid, personal judgment obtained by a defendant on the merits of an action. The judgment bars relitigation of the same cause of action, or any part thereof which could have been litigated between the same parties and their privies.” *K & L Trucking Co. v. Thurber*, 1 Va. App. 213, 219, 337 S.E.2d 299, 302 (1985). The grievance procedure recognizes and embraces the principle of res judicata in that grievances may “[n]ot duplicate another grievance challenging the same action or arising out of the same facts.” *Grievance Procedure Manual*, § 2.4 (6), page 7.

Notice and the termination it recommended may not be challenged again at a second hearing. Accordingly, the February 26 grievance cannot proceed to a separate hearing.

APPEAL RIGHTS AND OTHER INFORMATION

For information regarding the actions the grievant may take as a result of this ruling, please refer to the enclosed sheet. If the grievant wishes to appeal this determination to the circuit court, the grievant should notify the human resources office, in writing, within five workdays of receipt of this ruling. If the court should qualify this grievance, within five workdays of receipt of the court's decision, the agency will request the appointment of a hearing officer unless the grievant wishes to conclude the grievance and notifies the agency of that desire.

Claudia T. Farr
Director

Leigh A. Brabrand
Employment Relations Consultant