

Issue: Compliance/Consolidation for purposes of hearing; Ruling Date: September 24, 2002; Ruling #2002-176; Agency: Department of Social Services; Outcome: consolidation granted.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Social Services/ No. 2002-176
September 24, 2002

The Department of Social Services (DSS) has requested a compliance ruling regarding three grievances initiated against the agency in June and July 2002. DSS requests that these grievances be consolidated for a single hearing.

FACTS

The grievant was formerly employed as a Financial Services Practitioner I with DSS. On June 17, 2002, the grievant filed a grievance claiming that her supervisor harassed and retaliated against her for previous grievance activity.¹ As evidence of harassment and retaliation, the grievant cited an April 26 Group II Written Notice and a June 7 counseling memorandum, both of which were issued for alleged failure to follow a manager's instructions.

The grievant filed another grievance on July 1, 2002 challenging the June 26 issuance of a Group II Written Notice for failure to follow a supervisor's instructions, which included a notice of the agency's intent to terminate the grievant's employment. The grievant further reiterated her concern that her supervisor was retaliating against her for filing grievances in 2000 and 2001. Finally, on July 17, the grievant filed another grievance reiterating her claim of retaliation and challenging her termination.

DSS has qualified these three grievances for hearing, and has requested that they be consolidated for hearing. The agency claims that all the grievances involve the same parties and arise out of the same factual background, so it would be appropriate to hear the grievances in a single hearing. The grievant has no objection to consolidation.

DISCUSSION

Written approval by the Director of this Department in the form of a compliance ruling is required before two or more grievances are permitted to be consolidated in a single hearing. EDR strongly favors consolidation and will grant consolidation when

¹ The grievant filed grievances in October 2000 and 2001.

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grievances involve the same parties, legal issues, policies, and/or factual background, unless there is a persuasive reason to process the grievances individually.²

In this case, the events giving rise to the grievances appear to be related.³ Furthermore, the parties agree to consolidation and it appears that consolidation would not lead to impracticable results. Accordingly, the grievances are consolidated for hearing. This Department's rulings on matters of compliance are final and nonappealable.⁴

Claudia T. Farr
Director

Leigh A. Brabrand
Employment Relations Consultant

² *Grievance Procedure Manual* § 8.5, page 22. While the parties to a grievance may elect to treat multiple grievances as one through the management resolution steps, only the Director of this Department has the authority to consolidate multiple grievances for hearing.

³ In fact, two of the grievances are, in essence, challenging the same agency action (the July 1 grievance challenges the Group II written notice with intent to terminate, while the July 17 grievance challenges the resulting termination). The better practice would have been to issue the written notice *with termination*, rather than with termination *pending*. Although the agency separated the termination from the disciplinary notice, the two issues are so closely related (indeed, it could be argued that the two are inseparable) that consolidation is appropriate.

⁴ Va. Code § 2.2-1001(5).