

Issue: Compliance/Consolidation of grievances; Ruling Date: March 17, 2003; Ruling #2003-050; Agency: Department of Military Affairs; Outcome: Consolidation request premature; not consolidated.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of Military Affairs
No. 2003-050
March 17, 2003

The grievant has requested a compliance ruling regarding seven pending grievances: one initiated on September 9, 2002, three initiated on February 19, 2003, two on February 20, 2003 and one on March 6, 2003 with the Department of Military Affairs (DMA or agency). The grievant seeks consolidation of the six most recent grievances. Further, the grievant requests that a reopening of the February 5, 2003 hearing in the September 9, 2002 grievance be withheld and consolidated with her upcoming termination hearing in the March 6, 2003 grievance.

FACTS

Until her March 6, 2003 termination, the grievant has been employed as a Law Enforcement Officer I with DMA. On September 9, 2002, the grievant initiated a grievance (Grievance #1) alleging that the agency retaliated against her after she made complaints regarding a co-worker's behavior, which she claimed was intimidating and physically threatening. On January 24, 2003, the grievant initiated a second grievance (Grievance #2) alleging that denying her access to agency premises constituted continued retaliation. The September 9th grievance proceeded to hearing on February 5, 2003. In a March 4, 2003 compliance ruling, this Department administratively closed Grievance #2 as duplicative of Grievance #1. The March 4, 2003 ruling further advised the grievant that she could have requested the admission of evidence pertaining to the issues contained in Grievance #2 at her February 5, 2003 hearing, as evidence in support of her retaliation claims in Grievance #1. After the issuance of this Department's March 4 ruling, the hearing officer offered to reopen the February 5th hearing to entertain any evidence to support Grievance #1 relating to the alleged retaliation asserted in Grievance #2. The hearing officer is currently awaiting the outcome of this compliance ruling before reopening the February 5, 2003 hearing, and has not yet issued a hearing decision in Grievance #1.

After the February 5th hearing, the grievant initiated six additional grievances. Three of those grievances were initiated on February 19, 2003. The first grievance initiated on February 19th (Grievance #3) challenges a letter of caution contained in the grievant's personnel file. The second February 19th grievance (Grievance #4) challenges

a negative annual evaluation. The final grievance initiated on February 19th (Grievance #5) challenges a January 21, 2003 memorandum contained in the grievant's personnel file. On February 20, 2003, the grievant initiated two additional grievances. The first grievance (Grievance #6) alleges retaliation, while the second February 20, 2003 grievance (Grievance #7) alleges retaliation and lack of due process with respect to a pre-disciplinary suspension.

A final expedited grievance was initiated on March 6, 2003 (Grievance #8) challenging the issuance of two Group III Written Notices with termination. All of these grievances are currently at the second management resolution step in the grievance process. This ruling addresses the grievant's request for consolidation of Grievances #3, #4, #5, #6, #7 and #8 as well as her request that the February 5th hearing in Grievance #1 be reopened and consolidated with the grievant's upcoming termination hearing in Grievance #8. The grievant further requests that evidence described in Grievance #2, which has not yet been heard in support of Grievance #1, be heard at the consolidated hearing.

DISCUSSION

Consolidation

This Department has long held that grievances may be consolidated at the resolution step phase of the grievance process by mutual agreement of the parties. Further, whenever more than one grievance is pending involving the same parties, legal issues, policies, and/or factual background, this Department may consolidate the grievances for purposes of hearing, unless there is a persuasive reason to process the grievances individually.¹ However, written approval by the Director of this Department or her designee in the form of a compliance ruling is required before two or more grievances are permitted to be consolidated in a single hearing.

At this time, a consolidation of the February 19th, February 20th and March 6th grievances (Grievances ##3, 4, 5, 6, 7 and 8) for hearing is inappropriate because each of those grievances is still in the management resolution steps.² Indeed, while Grievance #8 automatically qualifies for a hearing, the three grievances initiated on February 19th and the two grievances initiated on February 20th do not automatically qualify for a hearing. Once Grievances ##3-8 have moved through the management resolution steps and reach the qualification stage, either party can renew a request for consolidation to this Department.

¹ *Grievance Procedure Manual*, § 8.5, page 22.

² Generally, this Department grants consolidation at the hearing stage, not during the management resolution steps, unless there are persuasive and practical reasons to do so.

Procedural Issues

Because the issues contained in Grievances #3 through #8 are possibly related to the issues heard and presented at the February 5, 2003 hearing, the hearing officer is instructed to hold in abeyance his decision in the February 5, 2003 hearing until all other grievances have proceeded through the management resolution steps and qualification and consolidation determinations have been made. Once it is determined which grievances qualify for hearing and whether consolidation is appropriate, the February 5, 2003 hearing will be reopened and consolidated with the grievant's termination hearing.³ At this single hearing before the hearing officer appointed to hear Grievance #1, the grievant may request the admission of evidence connected to claims contained in the administratively closed Grievance #2.

CONCLUSION

For the reasons discussed above, this Department concludes that consolidation of the six active grievances is inappropriate at this time. The parties are instructed to proceed with the management resolution steps in the grievance process. This Department's rulings on matters of compliance are final and nonappealable.⁴

Claudia T. Farr
Director

³ Grievances relating to formal discipline automatically qualify for hearing. See *Grievance Procedure Manual* § 4.1(a), page 10.

⁴ Va. Code § 2.2-1001(5).