

Issue: Compliance/Consolidation of Grievances for hearing; Ruling Date: April 18, 2003; Ruling #2003-074; Agency: Department of Mental Health, Mental Retardation and Substance Abuse Services; Outcome: Grievances consolidated for hearing



## ***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 2003-074

April 18, 2003

The agency has requested a compliance ruling regarding three grievances initiated by the grievant on December 17, 2002 and January 27, 2003. The agency requests that the three grievances be consolidated for a single hearing, to which the grievant agrees. For the reasons discussed below, the three grievances are consolidated and will proceed to a single hearing.

#### FACTS

Until his termination, the grievant was employed as a Cook Aide II. On November 19, 2002, he was issued a Group I Written Notice for inadequate job performance.<sup>1</sup> On December 17, 2002, he initiated a grievance to challenge the disciplinary action. On January 23, 2003, the grievant was issued another Group I Written Notice, also for inadequate job performance.<sup>2</sup> On the same date, he was issued a Group III Written Notice with termination for sleeping during work hours. On January 27, 2003, he initiated separate grievances challenging the January 23, 2003 Group I Written Notice and the Group III Written Notice.

#### DISCUSSION

Written approval by the Director of this Department in the form of 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 grievances involve the same parties, legal issues, policies, and/or factual background, unless there is a persuasive reason to process the grievances individually.<sup>3</sup> For example, if consolidation for hearing would be impracticable, the EDR Director may direct that the grievance be heard by the same hearing officer, but with separate hearings and decisions.<sup>4</sup>

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<sup>1</sup> The alleged poor performance was based on the grievant's purported failure to recycle cardboard boxes.

<sup>2</sup> The January 23<sup>rd</sup> written Notice was based, in part, on pantry errors that allowed allergic foods to be placed on a client's food tray.

<sup>3</sup> Grievance Procedure Manual § 8.5, page 22.

<sup>4</sup> Rules for Conducting Grievance Hearings, III. (C), page 3. For example, this Department might conclude that because of the complexity of the disputed issues or the sheer numbers of witnesses and relevant documents, consolidation would result in an unwieldy single hearing. In such cases, it may make sense to confine the individual grievances to separate hearings.

This Department finds that consolidation of the three grievances at hearing in this case is appropriate. While three Group Notices are distinct disciplinary actions issued for separate offenses, both parties have requested consolidation and, more importantly, consolidation is not impracticable. For that reason, the three grievances are consolidated to be heard by the same hearing officer in a single hearing.<sup>5</sup> This Department's rulings on compliance are final and nonappealable.<sup>6</sup>

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Claudia T. Farr  
Director

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EDR Consultant, Sr.

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<sup>5</sup> It should be noted that consolidation of multiple grievances challenging separate disciplinary actions that are based on unrelated circumstances is a departure from this Department's past practice. However, where *both* parties have requested consolidation, the potential for prejudice to either is presumably minimized. For that reason, and in the interest of judicial economy and the economic interests of the parties, henceforth, this Department *generally* will consolidate such grievances if *both* parties request consolidation *and* this Department does not find consolidation impracticable. (See *Switzenbaum v. Orbital Sciences Corp.*, 187 F.R.D. 246 (E.D. Va. 1999), discussing Rule 42(a) of the Federal Rules of Civil Procedure, which permits the consolidation of actions that pose common questions of law or fact. In that case, the court concluded that "[j]udicial economy generally favors consolidation, but the Court must conduct a careful inquiry in this regard that balances the prejudice and confusion that consolidation might entail against the waste of resources, the burden on the parties, and the risk of inconsistent judgments that separate proceedings could engender." *Switzenbaum* at 247-248.) While this Department is cognizant of the burden that separate hearings can place on parties, the primary objective of this Department is to ensure that both parties are ensured a full and fair opportunity to present their cases through a well-administered hearing process. Therefore, as is the case with all compliance matters, this Department shall make the final determination as to whether consolidation is practicable and appropriate.

<sup>6</sup> Va. Code § 2.2-1001 (5).