

Issue: Compliance/Consolidation of grievances for purposes hearing; Ruling Date: October 31, 2003; Ruling #200-427; Agency: Department of State Police; Outcome: not consolidated. (keywords = distinct disciplinary actions)



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution
COMPLIANCE RULING OF DIRECTOR

In the matter of Department of State Police
Ruling Number 2003-427
October 31, 2003

The agency has requested a compliance ruling regarding two grievances initiated by the grievant on August 16, 2003 and September 8, 2003. The agency requests that both grievances be consolidated for a single hearing, to which the grievant objects, essentially, on the basis that he will not have adequate time to prepare for a consolidated hearing. For the reasons discussed below, these two grievances are not consolidated and will proceed to separate hearings and decisions.

FACTS

The grievant is employed as a Trooper II. On July 23, 2003, he was issued a Group I Written Notice for failure to follow written policy. On August 16, 2003, the grievant initiated a grievance challenging the disciplinary action. The grievance was unresolved during the respondent steps and on September 23, 2003, was qualified for hearing.

On August 11, 2003, the grievant was issued a Group I Written Notice for failure to follow a different written policy. On September 8, 2003, he initiated a grievant to challenge the disciplinary action. This grievance was also not resolved during the respondent steps and on October 17, 2003, was qualified for hearing. The agency requests that the two grievances be consolidated for a single hearing.

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 grievances involve the same parties, legal issues, policies, and/or factual background, unless there is a persuasive reason to process the grievances individually.¹ 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.²

¹ Grievance Procedure Manual § 8.5, page 22.

² Rules for Conducting Grievance Hearings, III. (C), page 3.

In this case, the grievant's objections to consolidation of both grievances at hearing are persuasive: (i) although both group notices were issued for alleged failure to follow written policies, the two group notices are distinct disciplinary actions issued for unrelated, separate offenses that allegedly occurred on different dates,³ and (ii) the grievant asserts that he would be prejudiced by consolidation as he would not have adequate time to prepare for a consolidated hearing. For these reasons, the two grievances are not consolidated. This Department's rulings on compliance are final and nonappealable.⁴

Claudia T. Farr
Director

June M. Foy
EDR Consultant, Sr.

³ The July 23, 2003 Group I Written Notice was issued for conduct that allegedly occurred on May 19, 2003. The August 11, 2003 Written Notice was issued for conduct that allegedly occurred on April 10, 2003.

⁴ Va. Code § 2.2-1001 (5).