

Issue: Compliance/consolidation request for 2 grievances for purposes of hearing; Ruling Date: December 10, 2003; Ruling #2003-494; Agency: Department of Mental Health, Mental Retardation and Substance Abuse Services; Outcome; premature request; one grievance still in management steps; not consolidated



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 2003-494
December 10, 2003

The agency has requested a compliance ruling regarding two grievances initiated by the grievant. The agency requests that the two grievances be consolidated for a single hearing. For the reasons discussed below, these two grievances are not consolidated and will proceed to separate hearings and decisions.

FACTS

The grievant initiated a grievance on September 19, 2003, challenging a Group II Written Notice and suspension. The grievance proceeded through the resolution steps and was qualified for hearing. A hearing officer was appointed, and during a November 25, 2003 prehearing conference, a Thursday, December 11, 2003 hearing date was set.

On October 17, 2003, the grievant initiated a second grievance challenging a second Group II Notice, which resulted in her discharge. This grievance is currently in the management resolution steps.

After close of business on Monday, December 8, 2003, the agency requested consolidation of the two grievances for hearing. It appears that the grievant also desires consolidation.

DISCUSSION

This Department has long held that grievances may be consolidated during the management resolution steps of the grievance process by mutual agreement of the parties, for the purpose of jointly addressing the grievances during the management resolution stage of the process. However, 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 for a single hearing. EDR strongly favors consolidation and will grant consolidation for hearing when two or more grievances are each at the hearing stage, and

involve the same parties, legal issues, policies, and/or factual background, unless consolidation would be impracticable.¹

In this case, both grievances involve disciplinary actions and the same parties, and both parties desire consolidation. However, one grievance remains at the management resolution stage. Further, given the extremely close proximity in time of the consolidation request to the scheduled hearing, this Department finds consolidation to be impracticable in that there is insufficient time to examine whether, despite the various stages of these two grievances, consolidation would nevertheless be appropriate. Both parties have known of the second grievance since October 17, 2003, and if either desired consolidation, a request for a consolidation ruling for hearing purposes could have been presented to EDR before the week of the hearing.

To the extent that the agency's ruling request asserts that the hearing officer abused his discretion by not granting its request for a continuance of the hearing, this Department can find no abuse of discretion based on the facts stated in the agency's ruling request.² This Department's rulings on compliance are final and nonappealable.³

Claudia T. Farr
Director

¹ Grievance Procedure Manual 8.5, page 22. See also EDR Ruling 2003-050.

² The agency sought a continuance from the hearing officer, who denied the request having earlier denied a similar request from the grievant. First, the agency asserts that it is having difficulty retaining a representative for the hearing. However, as noted above, the hearing has been scheduled since November 25, 2003. This Department has consistently held that a hearing officer does not abuse his discretion by refusing to continue a hearing where a party has delayed in retaining a representative. See EDR Ruling 2002-213. The agency also appears to base its request on a scheduling conflict with two key witnesses who are to receive training on the day of the hearing. Scheduling conflicts like this should be raised at the pre-hearing conference, if possible, or soon thereafter, not immediately prior to hearing.

³ Va. Code § 2.2-1001 (5).