

Issue: Compliance/consolidation of two grievances for purposes of hearing; Ruling #2004-591; Ruling Date: February 6, 2004; Agency: Department of Corrections; Outcome: grievances consolidated; hearing officer is directed to issue separate decisions.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution
COMPLIANCE RULING OF DIRECTOR
In the matter of Department of Corrections
Ruling Number 2004-591
February 6, 2004

The grievant has requested a compliance ruling regarding two grievance initiated on December 7, 2003. The issue is whether the two grievances should be consolidated for a single hearing, to which the agency objects, essentially, on the basis that there were two separate and distinct violations, each warranting disciplinary action. For the reasons discussed below, the two grievances are consolidated and will proceed to hearing together, but the hearing officer is directed to issue separate decisions.

FACTS

The grievant is employed as a Corrections Officer Senior. On November 10, 2003, the grievant was assigned to supervise a highway gang. Allegedly, an inmate was in the road when a car approached. When the inmate failed to respond to the grievant's instructions to move out of the road, the grievant stopped the car. He then approached the inmate with a loaded weapon in his holster, and forcefully pushed the inmate out of the road. After the car had passed, the grievant used force to restrain the inmate.

On December 7, 2003, the grievant was issued separate Group III Written Notices with suspension and transfer for inmate abuse¹ and violating safety rules.² On December 7, he initiated separate grievances to challenge each of the disciplinary actions. The two grievances were not resolved during the respondent step and on January 29, 2004, were qualified for hearing. The grievant requests that the two grievances be consolidated for a single hearing.

DISCUSSION

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. 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.³

¹ "Physical abuse or other abuse, either verbal or mental, which constitutes recognized maltreatment of offenders."

² "Violating safety rules where there is a treat of physical harm."

³ Grievance Procedure Manual § 8.5, page 22.

This Department finds that consolidation of the two grievances at hearing in this case is appropriate: the two grievances originate from the same event, the grievances involve the same management officials, the two grievances were consolidated for the second-step meeting, and consolidation is not impracticable in this instance. This Department's rulings on compliance are final and nonappealable.⁴

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Director

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⁴ Va. Code § 2.2-1001 (5).