

Issue: Consolidation for purposes of hearing; Grievance issues are Discipline/Failure to follow supervisor instructions; management actions/training; retaliation/grievance activity participation; Ruling Date: April 18, 2005; Ruling #'s 2005-1013, 2005-1014; Agency: Virginia Information Technologies Agency; Outcome: grievances are consolidated for purposes of hearing; hearing officer may issue decision jointly or separately per his discretion.



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

In the matter of Virginia Information Technologies Agency
Ruling Numbers 2005-1013 and 2005-1014
April 18, 2005

The grievant has requested a compliance ruling regarding one grievance initiated on February 2, 2005 and another grievance he initiated on March 16, 2005. The issue is whether the two grievances should be consolidated for a single hearing, to which the agency agrees. For the reasons discussed below, the two grievances are consolidated and will proceed to hearing together. The hearing officer, in his discretion, may address the two actions separately in one decision, or in two separate decisions.

FACTS

The grievant is employed by the agency as an IT Specialist I. On January 3, 2005, he was issued a Group I Written Notice for failure to report to work as scheduled without proper notification to his supervisor. On the same date, he was also issued a Group II Written Notice with suspension for misuse of state property, abuse of state time, and failure to follow supervisor's instructions. On February 2, 2005, the grievant initiated a single grievance challenging both the Group I and Group II Written Notice.¹ At the second management respondent step, the Group I Written Notice was removed as partial relief of his grievance. The issue of the Group II Written Notice was unresolved during the management respondent steps and on March 22, 2005, was qualified for hearing by the agency head.

On March 4, 2005, the grievant was notified by his supervisor that he had been registered to attend four training courses. However, later on March 15, he was notified that his attendance had been denied for performance related reasons. On March 16, 2005, the grievant initiated a grievance challenging a misapplication of training policy and retaliation for his prior grievance activity. The grievance was unresolved during the management respondent steps. On April 8, 2005, the issue of retaliation was qualified for hearing by the agency head.

DISCUSSION

¹ Specifically, the grievant cited; (1) harassment, (2) workplace violence, (3) intimidation, (4) retaliation, and (5) failure to apply policies uniformly.

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.²

While the issues being grieved originate from separate and distinct events, this Department finds that consolidation of the two grievances is nevertheless appropriate. The grievances involve the same management officials, both parties agree to consolidation, and most importantly, consolidation is not impracticable. Additionally, consolidation will allow exploration of the grievant's claim of retaliation raised both in his grievance of February 2 and March 16, 2005. This Department's rulings on compliance are final and nonappealable.³

Claudia T. Farr
Director

June M. Foy
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² *Grievance Procedure Manual*, § 8.5.

³ Va. Code § 2.2-1001 (5).