

Issue: Qualification/allegedly inaccurate/fraudulent EWP; Consolidation/consolidate grievances for purposes of hearing; Ruling Date: January 18, 2006; Ruling #2006-1147, 2006-1213; Agency: Department of Juvenile Justice; Outcome: qualified and consolidated.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION AND CONSOLIDATION
RULING OF DIRECTOR

In the matter of the Department of Juvenile Justice
Ruling No. 2006-1147, 1213
January 18, 2006

The grievant has requested qualification of his June 29, 2005 and November 21, 2005 grievances. For the reasons set forth below, these grievances are qualified and consolidated for hearing.

FACTS

The grievant was employed by the Department of Juvenile Justice (DJJ or agency) as a Community Relations Specialist. He claims that on June 28, 2004, he met with the Community Intervention and Gang Program Manager (CIGPM Manager) who informed him that she would henceforward serve as his immediate supervisor. The grievant asserts that she told him that he would need to submit a signed copy of the DJJ Classified/Non-Exempt Employee Time Record each week. The grievant states that he informed the CIGPM Manager that he was a non-exempt employee in a pay band five position, as reflected in his Employee Work Profile (EWP). The agency, on the other hand, asserts that the grievant was properly classified as holding a pay band three position when he transferred into his current position, and the EWP to which the grievant refers was never signed by management.¹ Despite the agency's stated concerns regarding the EWP, the agency has agreed to request that the Department of Human Resource Management (DHRM) audit the grievant's position and asserts that it will take appropriate actions based on DHRM's findings.

On June 29, 2005, the grievant initiated a grievance in which he asserted that the agency fraudulently altered his EWP. On his Grievance Form A, the grievant checked the box indicating that he did not present his grievance to his immediate supervisor because of discrimination or retaliation. As relief, the grievant requested that his EWP accurately reflect that he is in a pay band five exempt position. In his request for qualification, the grievant clarified that he believes that the agency discriminates on the

¹ The grievant counters that his EWP was signed by the Agency Head on October 13, 2004 and was altered by removing the last page which purportedly contained the Agency Head's signature.

basis of race. The agency head qualified the issue of race discrimination but declined to qualify the issue of the allegedly inaccurate and fraudulent EWP.

On November 21, 2005, the grievant initiated another grievance in which he claimed that he was subject to retaliation for participating in the grievance process and has been subjected to a hostile workplace because of his race and gender. The agency head did not qualify the November 21st grievance, finding that the grievant had not suffered an adverse employment action.

DISCUSSION

Qualification

June 29th Grievance

As discussed above, the agency head declined to qualify the specific issue of the allegedly inaccurate/fraudulent EWP raised in the June 29, 2005 grievance but qualified the broader issue of race discrimination. Given that the issue of discrimination has been qualified by the agency head and the issues surrounding the EWP appear to be viewed by the grievant as distinct examples of the agency's alleged discrimination, this Department deems it appropriate to send the relatively specific EWP claim to hearing along with the more general allegation of race discrimination. Accordingly, the EWP claim is also qualified for hearing.

November 21st Grievance

This Department has held that where a claim alleging discrimination or retaliation has been qualified for hearing, it is generally appropriate to send additional pending grievances based on the same sort of alleged retaliation or discrimination to hearing as well, to help ensure a full exploration of what could be interrelated facts and issues.² Thus, because both the June 29th and November 21st grievances both seek redress for alleged race discrimination, the November 21st grievance is qualified as well.

Consolidation

This Department has long held that it may consolidate grievances with or without a request from either party whenever more than one grievance is pending involving the same parties, legal issues, and/or factual background.³ EDR strongly favors consolidation and will grant consolidation unless there is a persuasive reason to process the grievances individually.⁴

² See EDR Ruling 2006-1194.

³ *Grievance Procedure Manual* § 8.5.

⁴ *Id.*

In this case, the grievant asserts that he has been subjected to a continuing course of discrimination, which includes both the conduct alleged in the June 29th grievance as well as that at issue in his November 21st grievance. In light of the commonality of the grievant's claims, this Department finds that consolidation of these two grievances is appropriate. The grievances involve the same parties and share a common factual background. Consolidation of these grievances should provide an effective and efficient means of resolving the related disputes at hand. Accordingly, the grievant's two pending grievances are consolidated and will be heard together by a single hearing officer at a single hearing.

CONCLUSION

For the reasons discussed above, this Department concludes that the grievant's June 29th and November 21st grievances are qualified and shall advance to a single hearing to be heard by a single hearing officer. By copy of this ruling, the grievant and the agency are advised that the agency has five workdays from receipt of this ruling to request the appointment of a hearing officer.

This Department's rulings on matters of compliance are final and nonappealable.⁵

Claudia T. Farr
Director

William G. Anderson, Jr.
EDR Consultant, Sr.

⁵ Va. Code § 2.2-1001(5).