

Issue: Consolidation/request to consolidate grievances for purposes of hearing; Ruling
Date: November 9, 2005; Ruling #2006-1181; Agency: Department of Fire Programs;
Outcome: consolidated for purposes of hearing



COMMONWEALTH of VIRGINIA

Department of Employment Dispute Resolution **COMPLIANCE RULING OF DIRECTOR**

In the matter of Department of Fire Programs
Ruling Number 2006-1181
November 9, 2005

The grievant through his representative has requested a compliance ruling regarding three grievances he initiated on August 11, September 6, and October 17, 2005 with the Department of Fire Programs (DFP).¹ The issue is whether the October 17, 2005 grievance should also be joined with the two previously consolidated grievances for a single hearing. The agency objects essentially on the basis that the grievance of October 17 challenges a disciplinary action which was issued for four (4) separate and distinct violations, and should be heard singly. For the reasons discussed below, the three grievances are consolidated and will proceed to hearing together. The hearing officer, in his discretion, may address the three actions separately in one decision, or in three separate decisions.

FACTS

The grievant was formerly employed by the agency as a Branch Chief. On July 13, 2005, he was issued a Group II Written Notice for failure to perform assigned work. On August 11, 2005, the grievant initiated a grievance to challenge the disciplinary action. By mutual agreement, the parties elected to by-pass the respondent steps and proceed directly to qualification and the hearing. On September 7, 2005, the grievance was qualified for hearing by the agency head.

On August 18, 2005, the grievant was issued a Group II Written Notice with suspension for failure to perform assigned work and follow supervisor's instructions. On September 6, 2005, the grievant initiated a grievance to challenge the disciplinary action and suspension. By mutual agreement, the parties again elected to by-pass the respondent steps and proceed directly to qualification and the hearing. On September 22, 2005, the grievance was qualified for hearing by the agency head. On October 7, 2005, this Department ruled that consolidation of the August 11 and September 6, 2005 grievances was appropriate. On October 12, 2005, a hearing officer was appointed to conduct the consolidated hearing, which is scheduled on November 14, 2005.

¹ The parties had previously agreed to consolidation of the August 11 and September 6, 2005 grievances for purposes of the hearing.

On September 22, 2005, the grievant was issued a Group I Written Notice with termination for unsatisfactory work performance.² On October 17, the grievant initiated a grievance to challenge the disciplinary action and the termination of his employment. The grievance has not yet been qualified to advance to 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

This Department finds that consolidation of the August 11, September 6, and October 17, 2005 grievances is appropriate. The grievances involve the same parties, will likely involve many of the same witnesses, and share a common theme: failure to perform assigned work/unsatisfactory work performance.⁴ Furthermore, consolidation is not impracticable in this instance. This Department's rulings on compliance are final and nonappealable.⁵

The hearing officer is directed to stay the hearing scheduled for November 14, 2005, if necessary, until qualification of the October 17 grievance.

Claudia T. Farr
Director

June M. Foy
EDR Consultant, Sr.

² The grievant's active disciplinary record contains the two Group II Written Notices now pending at hearing, and the Group I Written Notice issued on September 22, 2005. Therefore, termination of his employment is dependent on the hearing officer upholding both Group II Written Notices.

³ *Grievance Procedure Manual*, §8.5.

⁴ In all three disciplinary actions, the grievant is cited for unsatisfactory performance/failure to perform assigned work.

⁵ Va. Code § 2.2-1001 (5).