

Issue: Consolidation/combine three grievances for purposes of hearing; Ruling Date: February 10, 2006; Ruling #2006-1266, 2006-1267, 2006-1268; Agency: Department of Corrections; Outcome: consolidation granted for purposes of hearing



COMMONWEALTH of VIRGINIA

Department of Employment Dispute Resolution
CONSOLIDATION RULING OF DIRECTOR

In the matter of Department of Corrections
Ruling Number 2006-1266, 2006-1267, and 2006-1268
February 10, 2006

The grievant seeks a consolidation ruling regarding three grievances she initiated on September 12, 2005, September 21, 2005, and December 2, 2005. The issue is whether the three grievances should be consolidated for a single hearing, to which the Department of Corrections (DOC) agrees. 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 is employed by the agency as an Office Services Specialist. On August 26, 2005, she was issued a Group II Written Notice for violation of the DOC Confidentiality Policy. On September 12, 2005, the grievant initiated a grievance to challenge the disciplinary action. The grievance was unresolved during the management respondent steps, and on January 3, 2006, was qualified for hearing by the agency head.¹

On September 16, 2005, the grievant was again disciplined for violation of the DOC Confidentiality Policy and issued a Group II Written Notice with 15 days suspension. On September 21, 2005, she initiated a grievance to challenge the disciplinary action. The grievance was unresolved during the management respondent steps, and on January 3, 2006, was qualified for hearing by the agency head.²

On December 2, 2005, the grievant initiated a third grievance challenging that she had been retaliated against by her supervisor for participating in a protected activity.³

¹ At the third resolution step, the disciplinary action was reduced to a Group I Written Notice for unsatisfactory performance.

² At the third resolution step, the disciplinary action was reduced to a Group II Written Notice with 10 day suspension.

³ The grievant claims that on April 25, 2005, she observed her supervisor take an action that violated DOC Recruitment, Selection, and Appointment Policy, which she brought to her supervisor's attention. She contends that subsequent to that date, the supervisor initiated a campaign of retaliation against her to include the disciplinary notices issued on August 26 and September 16, 2005.

The grievance was unresolved during the management respondent steps, and on January 23, 2006, was qualified for hearing by the agency head.

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.⁴

This Department finds that consolidation of the September 12, September 21, and December 2, 2005 grievances is appropriate. The grievances involve the same parties, potentially many of the same witnesses, share a common factual background, and are essentially inextricably intertwined. Furthermore, consolidation is not impracticable in this instance. Additionally, consolidation will allow the exploration of the grievant's claim of retaliation and its alleged impact in the disciplinary actions that formed the basis for the grievances of September 12 and September 21, 2005. This Department's rulings on compliance are final and nonappealable.⁵

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Director

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⁴*Grievance Procedure Manual*, §8.5.

⁵ Va. Code § 2.2-1001 (5).