

Issue: Qualification and Consolidation/grievant claims agency misapplied and/or unfairly applied policies, procedures, rules and regulations; involuntarily removed grievant from program; Ruling Date: June 2, 2006; Ruling #2006-1354; Agency: Department of State Police; Outcome: qualified and consolidated for purposes of hearing



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION AND CONSOLIDATION
RULING OF DIRECTOR

In the matter of Department of State Police
Ruling No. 2006-1354
June 2, 2006

The grievant has requested qualification of his April 6, 2006 grievance. The grievant alleges that the Department of State Police (VSP or the agency) has taken informal discipline against him without a Written Notice, misapplied and/or unfairly applied "policies, procedures, rules and regulations," and involuntarily removed him from the State Canine Program. For the reasons set forth below, this grievance is qualified and consolidated with the grievant's pending April 4, 2006 grievance for hearing.

FACTS

The grievant was employed by the agency as a Trooper. On March 13, 2006, the grievant received a Group I Written Notice for unsatisfactory job performance. Subsequently, on March 17, 2006, the grievant was advised that he was being relieved from the Explosives Detection Canine Program. The agency states that it decided to remove the grievant from the program because he "continue[d] to demonstrate" that he was "not suitable for such a trusted position," as purportedly evidenced by an active Group III Written Notice for insubordination, the March 13th Group I Written Notice, and an alleged subsequent alteration of his vehicle and failure to return the vehicle to its original condition.

On April 4, 2006, the grievant initiated a grievance challenging the Group I Written Notice and asserting that the disciplinary action was a misapplication and/or unfair application of policy. The grievant apparently asserts that the agency's actions were motivated by his union activity, his previous participation in the grievance process, or both. After the parties failed to resolve the April 4th grievance during the management resolution steps, the agency qualified the grievance for hearing and requested the appointment of a hearing officer.

On April 6, 2006, the grievant initiated a grievance challenging his removal from the Canine Program. The grievant asserts that he was involuntarily removed from the

Canine Program, that this action constituted informal discipline in the absence of a Written Notice, and that his removal was an unfair and/or misapplication of “policies, procedures, rules and regulations.” The grievant apparently alleges that his removal was motivated by his union involvement. In both his April 4th and April 6th grievances, the grievant checked the box indicating that he was alleging discrimination or retaliation by his immediate supervisor; in both, he also waived the second-step meeting because of alleged discrimination or retaliation by the second-step respondent.

After the parties failed to resolve the April 6th grievance during the management resolution steps, the grievant asked the agency head to qualify his grievance for hearing. The agency head denied the request for qualification, and the grievant has appealed to this Department.

DISCUSSION

Qualification

Under the grievance procedure, formal discipline automatically qualifies for a grievance hearing.¹ On the other hand, grievances that challenge the assignment of duties are generally not qualified for hearing unless the grievant provides sufficient evidence in support of his claim.² However, as the grievant in this case will be afforded a hearing to challenge Group I Written Notice, we find that his grievance challenging his removal from the Canine Program should be qualified for hearing as well, without further exploration of the merits of his April 6th grievance at the qualification stage.

In making this determination, we note that the agency specifically identified the Group I Written Notice as one of the reasons for the grievant’s removal from the Canine Program. Because of this apparently causal relationship, if the hearing officer finds that the Group I Written Notice was discriminatory, retaliatory, a misapplication of policy, or otherwise unwarranted, he or she may deem it appropriate to grant relief on the grievant’s removal from the Canine Program, depending on the evidence presented at hearing.³ While we do not imply or suggest that such relief would necessarily be appropriate or warranted, it would make little sense to restrict the hearing officer’s ability to award relief through denying qualification on the April 6th grievance, when the two grievances are so inextricably intertwined. We further note, however, that this qualification ruling in no way determines that the grievant’s removal from the Canine Program was a misapplication or unfair application of policy or otherwise improper, but only that further exploration of the facts by a hearing officer is appropriate.

¹ *Grievance Procedure Manual*, § 4.1(a).

² Claims relating to the assignment of duties generally do not qualify for hearing unless the agency’s actions result in an adverse employment action, and the grievant presents evidence raising a sufficient question as to whether the actions were taken for disciplinary reasons, were influenced by discrimination or retaliation, or were the result of a misapplication or unfair application of policy.

³ *See Rules for Conducting Grievance Hearings* § VI.

Consolidation

EDR strongly favors consolidation of grievances for hearing 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 April 4th grievance with the April 6th grievance is appropriate. The grievances involve the same parties and likely many of the same witnesses. In addition, they share, at least in part, a related factual background. Finally, consolidation is not impracticable in this instance.

In the interests of efficiency, as the agency has already requested the appointment of a hearing officer in the April 4th grievance, this Department shall assume that the grievant wishes to advance his April 6th grievance to hearing and appoint a hearing officer to hear the consolidated grievances. If the grievant does not wish to pursue his April 6th grievance to hearing, he should notify this Department within 5 days of the date of this ruling.

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

Claudia T. Farr
Director

⁴ *Grievance Procedure Manual*, § 8.5.

⁵ Va. Code § 2.2-1001(5).