

Issues: Qualification – Performance Evaluation (Arbitrary/Capricious) and Consolidation of Grievances for Purpose of Hearing; Ruling Date: May 1, 2009; Ruling #2009-2211; Agency: University of Mary Washington; Outcome: Qualified and Consolidated.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION and CONSOLIDATION RULING OF DIRECTOR

In the matter of the University of Mary Washington
Ruling Number 2009-2211
May 1, 2009

The grievant has requested a ruling on whether her December 3, 2008 grievance with the University of Mary Washington (the agency) qualifies for hearing. For the reasons discussed below, this grievance qualifies for a hearing.

FACTS

The grievant initiated a grievance on December 3, 2008 to challenge her annual performance evaluation (Grievance 1). She received an overall rating of “below contributor” and was rated “below contributor” in the categories of (1) general office administration, (2) general clerical support, (3) interpersonal relations, (4) communications, and (5) planning/analytical skills/decision making. She received contributor ratings in the areas of (1) center IC system, (2) web page and research, (3) media creations, and (4) attendance, punctuality, and safety. The evaluation notes that the grievant received during the performance cycle (1) a Notice of Needs Improvement on 9/18/2008, (2) a Group II Written Notice on 9/18/2008, and (3) Group II Written Notice on 10/22/2008.

As a result of the “below contributor” rating, the grievant was placed on a 90-day improvement plan. On or about March 5, 2009, the grievant’s employment was terminated for purportedly poor performance. The grievant initiated a grievance on March 23, 2009 to challenge her dismissal (Grievance 2). The agency qualified Grievance 2 on April 8, 2009.

DISCUSSION

Qualification

Under the grievance procedure, formal discipline and dismissals for unsatisfactory performance automatically qualify for a grievance hearing.¹ On the other hand,

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

grievances that challenge performance evaluations are generally not qualified for hearing unless the grievant provides sufficient evidence in support of her claim. However, as the grievant in this case will be afforded a hearing to challenge her dismissal for unsatisfactory performance, we find that her grievance challenging her annual performance evaluation (Grievance 1) should be qualified for hearing as well, without further exploration of the merits at the qualification stage.

In making this determination, we note that the “below contributor” rating on her annual performance evaluation led to the 90-day performance plan. The agency has already granted the grievant a hearing to challenge her dismissal. As a matter of fairness and procedural economy, it simply makes sense to allow the grievant to present her evidence regarding the alleged impropriety of both the “below contributor” rating and her dismissal while at hearing. Thus, Grievance 1 is also qualified for hearing.² We further note that this qualification ruling in no way determines that the annual evaluation rating or subsequent dismissal was arbitrary, capricious, or otherwise improper, but only that further exploration of the facts by a hearing officer is appropriate.

Consolidation

Approval by the Director of this Department or her designee in the form of a compliance ruling is required before two or more grievances may be consolidated in a single hearing. Moreover, EDR may consolidate grievances for hearing without a request from either party.³ EDR strongly favors consolidation and will consolidate grievances when they 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 Grievance 1 and Grievance 2 is appropriate. Both grievances concern a single grievant and share related themes and claims. Moreover, we find that consolidation is not impracticable in this instance.

The agency has requested the appointment of a hearing officer for Grievance 2. Further, the agency is directed to submit an updated Form B for Grievances 1 and 2 reflecting the qualification of both grievances in full. Grievance 1 will be assigned to the same hearing officer who will hear both grievances at a single grievance hearing.

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

Claudia T. Farr
Director

² See, e.g., EDR Ruling Nos. 2009-2240; 2009-2215; and 2006-1354 (related claims qualified for hearing).

³ *Grievance Procedure Manual* § 8.5.

⁴ See *id.*

⁵ See Va. Code §§ 2.2-1001(5), 2.2-3003(G).