

Issues: Qualification (Arbitrary/Capricious Performance Evaluation) and Consolidation of grievances for purpose of hearing; Ruling Date: March 27, 2009; Ruling #2009-2240; Agency: Department of Social Services; Outcome: Qualified and Consolidated for Hearing.



*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*

**QUALIFICATION and CONSOLIDATION RULING OF  
DIRECTOR**

In the matter of Department of Social Services  
Ruling No. 2009-2240  
March 27, 2009

The grievant has requested qualification of his October 30, 2008 grievance. In his grievance, the grievant alleges that his annual performance evaluation rating of “Below Contributor” was arbitrary and capricious. For the reasons set forth below, this grievance is qualified for hearing.

FACTS

The grievant was employed as a Systems Analyst. On or about September 30, 2008, the grievant was presented with his annual performance evaluation, in which he received an overall “Below Contributor” rating. On or about October 30, 2008, the grievant initiated a grievance in which he challenged his performance evaluation (Grievance 1). The agency head denied qualification of this grievance. Accordingly, the grievant has appealed to this Department.

The grievant was terminated from employment on or about February 9, 2009 for poor job performance.<sup>1</sup> He challenged his termination via a grievance, initiated on or about February 17, 2009 (Grievance 2). Grievance 2 was qualified by the agency head on March 18, 2009.

DISCUSSION

*Qualification*

Under the grievance procedure, formal discipline and dismissals for unsatisfactory performance automatically qualify for a grievance hearing.<sup>2</sup> On the other hand, grievances that challenge performance evaluations are generally not qualified for hearing unless the grievant provides sufficient evidence in support of his claim. However, as the grievant in this case will be afforded a hearing to challenge his dismissal for unsatisfactory performance, we find that his grievance challenging his annual

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<sup>1</sup> The grievant asserts that he received on February 9, 2009, a letter of termination based on a re-evaluation of his job performance, which was completed on February 4, 2009.

<sup>2</sup> *Grievance Procedure Manual* § 4.1(a).

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 his annual performance evaluation led to a 3-month performance plan. The agency has already granted the grievant a hearing to challenge the “Unsatisfactory” rating for the 3-month performance plan, as well as his subsequent dismissal. It was the “Below Contributor” rating on his annual performance evaluation that prompted the 3-month performance plan. As a matter of fairness and procedural economy, it simply makes sense to allow the grievant to present his evidence regarding the alleged impropriety of both the “Below Contributor” and “Unsatisfactory” ratings while at hearing. Thus, Grievance 2 is also qualified for hearing.<sup>3</sup> We further note, that this qualification ruling in no way determines that the rating that the grievant received on his annual evaluation (or 3-month performance plan) 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.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup>

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Claudia T. Farr  
Director

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<sup>3</sup> See, e.g., EDR Ruling No. 2009-2215; EDR Ruling No. 2006-1354 (related claims qualified for hearing).

<sup>4</sup> *Grievance Procedure Manual* § 8.5.

<sup>5</sup> See *id.*

<sup>6</sup> See Va. Code §§ 2.2-1001(5), 2.2-3003(G).