

Issue: Consolidation of Grievances for purpose of hearing; Ruling Date: June 1, 2009; Ruling #2009-2329, 2009-2330; Agency: Virginia Department of Transportation; Outcome: Consolidation Granted.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

CONSOLIDATION RULING OF DIRECTOR

In the matter of the Department of Transportation
Ruling Numbers 2009-2329, 2009-2330
June 1, 2009

The Department of Transportation (the agency), has asked that the grievant's April 10, 2009 grievance be consolidated for hearing with the grievant's October 23, 2008 grievance. For the reasons discussed below, this Department finds that consolidation of these two grievances into a single hearing is appropriate and practicable.

FACTS

The grievant appears to have initiated two grievances¹ to challenge, in part, receipt of various disciplinary actions regarding excessive tardiness and absenteeism, and other related issues. Further, the April 10, 2009 grievance challenges the grievant's termination for accumulation of disciplinary actions for these alleged instances of misconduct. A hearing officer has already been appointed in the grievant's October 23, 2008 grievance (Case Number 9065). The April 10, 2009 grievance is proceeding through the management resolution steps and has yet to be qualified for hearing. In an e-mail dated April 20, 2009, the agency asked that this Department consolidate the grievances for hearing.

DISCUSSION

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.² 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.³

This Department finds that consolidation of these two grievances for hearing is appropriate, provided the April 10, 2009 grievance is not resolved during the remaining resolution steps. Both grievances involve the same grievant and may share common themes, claims, and witnesses. It appears that the grievances challenge various disciplinary actions,

¹ Another grievance, dated February 20, 2009, was also initiated regarding similar issues. According to the agency, that grievance has since been administratively closed.

² *Grievance Procedure Manual* § 8.5.

³ *See id.*

which led to the grievant's termination, and the same related issues. Moreover, we find that consolidation is not impracticable in this instance.

As such, the grievant's April 10, 2009 grievance is consolidated with the October 23, 2008 grievance for a single hearing. Appointment of a hearing officer for the April 10, 2009 grievance will occur following qualification of this grievance for hearing and submission of a Form B with appropriate documentation by the agency. The hearing officer who has been assigned the October 23, 2008 grievance will be appointed for the April 10, 2009 grievance.

This Department's rulings on compliance are final and nonappealable.⁴

Claudia T. Farr
Director

⁴ See Va. Code § 2.2-1001(5), 2.2-3003(G).