

Issues: Qualification – Discipline (Failure to Follow Instructions and Unsatisfactory Performance) and Consolidation of Grievances for a Single Hearing; Ruling Date: July 24, 2009; Ruling #2010-2379; Agency: Department of Veterans 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 the Department of Veteran Services
Ruling No. 2010-2379
July 24, 2009

The grievant has requested a ruling on whether her May 14, 2009 grievance with the Department of Veteran Services (DVS or the agency) qualifies for a hearing. In her May 14th grievance, the grievant challenges the issuance of a Group II Written Notice with suspension. As discussed below, this grievance qualifies for a hearing.

FACTS

On April 29, 2009, management issued the grievant a Group II Written Notice with suspension for "Unsatisfactory Performance and Failure to Follow Instructions and/or Policy." On May 14, 2009, the grievant timely initiated a grievance challenging the Group II Written Notice with suspension (Grievance 1). The grievance advanced through the management resolution steps and on June 25, 2009, the grievant advanced her grievance to the qualification phase for the agency head to determine whether the issue presented qualified for a hearing. Subsequently, the agency head denied qualification, asserting that the agency's actions were fairly and appropriately administered. The grievant has asked this Department to qualify her grievance for hearing.

In addition, on May 15, 2009, management issued the grievant a second Group II Written Notice with termination for "Unsatisfactory Performance and Failure to Follow Instructions and/or Policy" as a result of the grievant's alleged computer misuse. On June 12, 2009, she timely initiated an expedited grievance requesting the removal of the Group II Written Notice and reinstatement to her position (Grievance 2). When the agency head denied the grievant's subsequent request for qualification, the grievant sought qualification from this Department. In a ruling dated July 17, 2009, this Department qualified Grievance 2.¹

¹ See EDR Ruling #2010-2369.

DISCUSSION

Qualification

The Commonwealth's policy "as an employer, [is] to encourage the resolution of employee problems and complaints."² To that end, the General Assembly has determined that "the grievance procedure shall afford an immediate and fair method for the resolution of employment disputes that may arise between state agencies and those employee who have access to the procedure."³ While most grievances may proceed through the management resolution steps if the grievant so chooses,⁴ only grievances that challenge certain actions can proceed to a hearing before a hearing officer.⁵

In this case, the grievant challenges a disciplinary action by management -- the issuance of a Written Notice with suspension. By statute and under the grievance procedure, all formal disciplinary actions (i.e., Written Notices and those suspensions, demotions, transfers and assignments, and dismissals resulting from formal discipline) *automatically* qualify for a hearing.⁶ Therefore, while the agency contends that management's actions were warranted and appropriate under the given circumstances, the grievant is entitled by statute and the grievance procedure to advance this grievance to a hearing, at which time each party may present their case. For the reasons set forth above, Grievance 1 is qualified for hearing.

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.⁷ 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.⁸

This Department finds that consolidation of Grievance 1 and Grievance 2 is appropriate. Both grievances concern a single grievant, share what may be related themes and claims, and

² Va. Code § 2.2-3000(A).

³ *Id.*

⁴ If the employee does not have access to the grievance procedure at the time of the initiation of the grievance, then management is not required to proceed with the resolution step process. *See Grievance Procedure Manual* § 2.3; *see also Grievance Procedure Manual* § 2.4, for instances where the agency may administratively close a grievance for noncompliance with the grievance procedure.

⁵ Va. Code § 2.2-3004(A); *Grievance Procedure Manual* § 4.1(a)-(c). For purposes of determining qualification for a hearing, agency actions are divided into three categories: Actions Which *Automatically* Qualify, Actions Which *May* Qualify and Actions Which *Do Not* Qualify.

⁶ *Id.* Dismissals for unsatisfactory performance also automatically qualify for a hearing.

⁷ *Grievance Procedure Manual* § 8.5.

⁸ *See id.*

will likely involve many of the same individuals. Moreover, we find that 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 Grievance 2, this Department shall assume that the grievant wishes to advance Grievance 1 to hearing. If the grievant does not wish to pursue Grievance 1 to hearing, she should notify this Department within 5 days of the date of this ruling. Finally, assuming that the grievant does not indicate that she now wishes to conclude her grievance, the agency is directed to submit an updated Form B for Grievance 1 reflecting the qualification of the grievance in full. A hearing officer will be appointed to hear both grievances after the Form B for Grievance 1 is received.

This Department's rulings on compliance are final and nonappealable.⁹

Claudia T. Farr
Director

⁹ See Va. Code §§ 2.2-1001(5), 2.2-3003(G).