

Issue: Consolidation of Grievances for a Single Hearing; Ruling Date: September 24, 2009; Ruling #2010-2424, 2010-2427; Agency: Department of Corrections;
Outcome: Consolidation Granted.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

CONSOLIDATION RULING OF DIRECTOR

In the matter of the Department of Corrections
Ruling Numbers 2010-2424, 2010-2427
September 24, 2009

This ruling addresses the consolidation of the grievant's January 9, 2009 and July 14, 2009 grievances filed with the Department of Corrections (the agency). For the reasons discussed below, this Department finds that consolidation of these grievances into a single hearing is appropriate and practicable.

FACTS

These grievances concern Written Notices issued to the grievant for separate instances of allegedly failing to report to work as instructed. After the parties failed to resolve the grievances during the management resolution steps, the agency head qualified the grievances for hearing. The agency has asked for appointment of a hearing officer in both grievances. In reviewing the requests, this Department contacted both parties to determine whether they would oppose consolidating the grievances into one hearing. While the agency now requests that the grievances be consolidated, the grievant objects. The grievant asserts that the grievances should be heard separately because the outcome of the January 9, 2009 grievance could affect the July 14, 2009 grievance.

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.¹ 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.²

While we understand the grievant's objection, the consolidation of these two grievances will not prevent the grievant from presenting his arguments against the two Written Notices

¹ *Grievance Procedure Manual* § 8.5.

² *See id.*

separately. Indeed, even when the grievances are consolidated, the hearing officer will have to consider the disciplinary actions separately and determine whether the evidence supports the issuance of each Written Notice. Therefore, for instance, if the hearing officer finds that the evidence does not support the first Written Notice and, therefore, it is rescinded, that Written Notice would not be considered as to the second Written Notice. Further, we find no prejudice to the grievant in consolidating these grievances.

Therefore, this Department finds that consolidation of these two grievances is appropriate. The grievances involve the same grievant and could share common themes, claims, and witnesses. Moreover, the disciplinary actions at issue appear to relate to similar instances of alleged misconduct. Further, we find that consolidation is not impracticable in this instance. Therefore, the grievant's January 9, 2009 and July 14, 2009 grievances are consolidated for a single hearing. A hearing officer will be appointed in a forthcoming letter.

This Department's rulings on compliance are final and nonappealable.³

Claudia T. Farr
Director

³ See Va. Code §§ 2.2-1001(5), 2.2-3003(G).