

Issues: Qualification – Separation from State (layoff), Retaliation (grievance activity), and Consolidation of Grievances for a Single Hearing; Ruling Date: February 5, 2010; Ruling #2010-2477, 2010-2499; Agency: Department of Conservation and Recreation; Outcome: Qualification and Consolidation granted.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

**QUALIFICATION AND
CONSOLIDATION RULING OF DIRECTOR**

In the matter of Department of Conservation and Recreation
Ruling Nos. 2010-2477, 2010-2499
February 5, 2010

The grievant has requested a ruling on whether his October 5, 2009 grievance with the Department of Conservation and Recreation (DCR or the agency) qualifies for a hearing. For the reasons discussed below, the October 5th grievance is qualified and consolidated with the grievant's pending May 27, 2009 grievance for a single hearing.

FACTS

On May 27, 2009, the grievant initiated a grievance challenging his non-selection for a supervisory position and asserting, in part, that the agency's actions were in retaliation for his previous protected activity. In EDR Ruling No. 2010-2443, this Department qualified the May 27th grievance for hearing.

Subsequently, on October 5, 2009, the grievant initiated a grievance challenging his prospective December 31, 2009 layoff from the agency. This grievance also asserts, in part, that the agency's decision to lay off the grievant was the result of a retaliatory motive. After the parties failed to resolve the grievance during the management resolution steps, the grievant asked the agency head to qualify the grievance for hearing. The agency head denied the qualification request, and the grievant has appealed to this Department.

DISCUSSION

Grievances that challenge management actions as retaliatory may be qualified for a hearing.¹ In this case, the grievant asserts that the layoff decision contested in his October 5th grievance is part of the same alleged pattern of retaliation that led to the non-selection challenged in his previous May 27th grievance. The May 27th grievance has been qualified. In light of the

¹ See *Grievance Procedure Manual* § 4.1(b).

shared claim of retaliation, and because any relief granted in the May 27th grievance could potentially impact the layoff decision at issue in October 5th grievance, it simply makes sense to qualify the October 5th grievance and send both grievances to a single hearing (see consolidation discussion below).² We note, however, that this qualification ruling in no way determines that the actions challenged by the October 5th grievance were retaliatory or otherwise improper, but rather only determines that further exploration of the facts by a hearing officer is appropriate.

Consolidation

EDR strongly favors consolidation of grievances for hearing and will grant consolidation when grievances 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 the October 5, 2009 grievance with the pending May 27, 2009 grievance is appropriate. The grievances share common themes and claims and, moreover, consolidation is not impracticable in this instance. Therefore, these grievances will be consolidated for a single hearing for adjudication by a hearing officer to help ensure a full exploration of what could be interrelated facts and issues.

CONCLUSION

Based on the foregoing, the grievant's October 5, 2009 grievance is qualified for hearing and consolidated with the grievant's May 27, 2009 grievance for a single hearing. Within five workdays of receipt of this ruling, the agency shall request the appointment of a hearing officer to hear these grievances, using the Grievance Form B. This Department's rulings on compliance are final and nonappealable.⁴

Claudia T. Farr
Director

² All additional theories such as discrimination are qualified as well.

³ *Grievance Procedure Manual* § 8.5.

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