

Issue: Consolidation of Grievances for a Single Hearing; Ruling Date: September 10, 2010; Ruling #2011-2766, 2011-2767, 2011-2768, 2011-2769; 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 2011-2766, 2011-2767, 2011-2768, 2011-2769
September 10, 2010

This ruling addresses the consolidation for hearing of the grievant's four grievances 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

On or about April 19, 2010, the grievant received a Group I Written Notice for unsatisfactory performance. The grievant initiated two grievances on May 15, 2010 to challenge this action and surrounding issues, each detailing a history the grievant has had with his supervisor and her management style, including alleged discrimination, harassment, and possibly retaliation (Grievances 1 and 2). The agency head has qualified both of these grievances for a hearing and requested the appointment of a hearing officer.

On or about April 12, 2010, the grievant also received a Group II Written Notice for failure to follow a supervisor's instructions, which has been challenged in the grievant's May 10, 2010 grievance (Grievance 3). In addition, the grievant received another Group I Written Notice for unsatisfactory performance on or about July 9, 2010. As a result of the accumulation of disciplinary actions, the grievant was terminated with this latest management action. The grievant has challenged this Written Notice and his termination in a grievance dated July 26, 2010 (Grievance 4). Grievances 3 and 4 are still proceeding through the management resolution steps and have yet to be qualified for hearing. However, both the grievant and the agency have sought consolidation of these four grievances.

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

¹ *Grievance Procedure Manual* § 8.5.

parties, legal issues, policies, and/or factual background, unless there is a persuasive reason to process the grievances individually.²

This Department finds that consolidation of these four grievances for hearing is appropriate, provided Grievances 3 and/or 4 are not resolved during the remaining resolution steps. All four grievances involve the same grievant and may share common themes, claims, and witnesses. It appears that Grievances 1 – 4 challenge Written Notices that led to the grievant's termination. Moreover, we find that consolidation is not impracticable in this instance.

As such, in light of both parties' requests for consolidation, the grievant's two May 15, 2010 grievances (Grievances 1 and 2), May 10, 2010 grievance (Grievance 3), and July 26, 2010 grievance (Grievance 4) are consolidated for a single hearing. Appointment of a hearing officer will occur following completion of the management resolution steps, qualification of the grievances for hearing, and submission of a Form B with appropriate documentation by the agency in Grievances 3 and 4.³ If either party objects or seeks to proceed with a hearing on Grievances 1 and 2 only without further delay, notification in writing should be made to this Department, with a copy to the opposing party, for consideration by the EDR Director.

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

Claudia T. Farr
Director

² *See id.*

³ If Grievance 3 or 4 are otherwise resolved or closed prior to hearing, a hearing officer will be appointed in the remaining grievances for hearing on those matters alone.

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