

Issues: Compliance – Grievance Procedure (30-Day Rule) and Consolidation of Grievances for a Single Hearing; Ruling Date: October 29, 2010; Ruling #2011-2783, 2011-2784, 2011-2797; Agency: Department of Behavioral Health and Developmental Services; Outcome: Grievant Not In Compliance; Consolidation Granted.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

**COMPLIANCE AND CONSOLIDATION
RULING OF DIRECTOR**

In the matter of the Department of Behavioral Health & Developmental Services
Ruling Numbers 2011-2783, 2011-2784, 2011-2797
October 29, 2010

This ruling addresses the consolidation of two of the grievant's grievances filed with the Department of Behavioral Health and Developmental Services (the agency). Also at issue in this ruling is a noncompliance matter regarding a third grievance.

FACTS

The grievant's May 7, 2010 and June 22, 2010 grievances concern the issuance of two Group II Written Notices, which culminated in her termination.¹ After the parties failed to resolve the grievances during the management resolution steps, the agency head partially qualified the grievances for hearing. Although the grievances appear to assert additional matters, the only issues qualified by the agency head were those concerning the two Group II Written Notices and the grievant's resulting termination.² The agency has asked for appointment of a hearing officer in these matters and requested that the grievances be consolidated for a single hearing. The grievant does not object to the consolidation.

The grievant also initiated a third grievance, dated July 23, 2010. The July 23, 2010 grievance appears to challenge many of the same issues as her other grievances, including the disciplinary actions and her termination. Due to issues of noncompliance, the agency administratively closed the July 23, 2010 grievance. The grievant now appeals that determination.

¹ The agency noted that in the May 7, 2010 grievance, the grievant did not clearly raise as an issue her challenge to the April 26, 2010 Written Notice. However, because the grievant discussed an issue related to that Written Notice in an attachment to the grievance, the agency head has qualified the issue regarding the Written Notice for a hearing.

² Although the grievant initially sought to appeal the agency's partial qualification of the two grievances, she now has asserted to this Department that she no longer challenges the partial qualification. Instead, she seeks to proceed to hearing on the two Written Notices and her termination. Therefore, we consider the challenge to the partial qualification withdrawn and will not address that matter here.

DISCUSSION

Compliance

To have access to the grievance procedure, an employee “[m]ust have been employed by the Commonwealth at the time the grievance is initiated (unless the action grieved is a termination or involuntary separation, in which case the employee may initiate a grievance within 30 days of the termination or separation).”³ In this case, the grievant’s employment with the Commonwealth was terminated on June 18, 2010. As such, this grievance was not appropriately or timely initiated because it was submitted more than 30 calendar days after the grievant’s termination.⁴ Further, there is no just cause for any delay. Therefore, the July 23, 2010 grievance was not initiated properly under the grievance procedure and has been appropriately closed. The parties are advised that the grievance should be marked as concluded due to noncompliance and no further action is required. This Department’s rulings on matters of compliance are final and nonappealable.⁵

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.⁶ 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.⁷

This Department finds that consolidation of the May 7, 2010 and June 22, 2010 grievances, to the extent qualified for hearing, is appropriate. These grievances involve the same grievant and could share common themes, claims, and witnesses. Moreover, the grievances all relate to the issuance of the Written Notices to the grievant and her termination. Further, we find that consolidation is not impracticable in this instance. Therefore, in light of the parties’ agreement that consolidation is acceptable, the issues qualified in the grievant’s May 7, 2010 and June 22, 2010 grievances are consolidated for a single hearing. A hearing officer will be appointed in a forthcoming letter.

Furthermore, in the interests of clarity and expediency, this Department must also address a potential issue raised by the agency’s partial qualifications in these matters. To the extent the “issues” not qualified by the agency head are merely theories⁸ advanced by the grievant to support her challenge to the Written Notices and termination, they cannot be severed from her

³ *Grievance Procedure Manual* § 2.3.

⁴ *Grievance Procedure Manual* §§ 2.3, 2.4.

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

⁶ *Grievance Procedure Manual* § 8.5.

⁷ See *id.*

⁸ As this Department has ruled, the “claims” or “issues” raised by a grievance are the management actions being challenged. See, e.g., EDR Ruling Nos. 2007-1561 & 2007-1587.

qualified challenge to the Written Notices and termination,⁹ and may be raised at hearing to support her challenge.¹⁰ To the extent, however, these “issues” not qualified by the agency head challenge and seek relief for alleged management actions other than the Written Notices and termination, these “issues” remain non-qualified.

This ruling in no way determines that any additional allegations raised by the grievant as to the Written Notices have any merit, only that such theories may be raised at hearing with respect to the Written Notices. In addition, this ruling does not address what may be offered or admitted into evidence at hearing. For instance, evidence regarding past occurrences that is relevant to the grievant’s claims as to the Written Notices could possibly still be offered by either or both parties as background evidence in support of their respective positions regarding the Written Notices.

This Department’s rulings on compliance are final and nonappealable.¹¹

Claudia T. Farr
Director

⁹ See EDR Ruling Nos. 2009-2127, 2009-2129, 2009-2130.

¹⁰ See EDR Ruling No. 2011-2796.

¹¹ See Va. Code §§ 2.2-1001(5), 2.2-3003(G).