

Issue: Consolidation of Grievances for a Single Hearing; Ruling Date: October 28, 2010; Ruling #2011-2800, 2011-2801, 2011-2802; Agency: Department of Behavioral Health and Developmental Services; Outcome: Consolidation Granted.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

CONSOLIDATION RULING OF DIRECTOR

In the matter of the Department of Behavioral Health & Developmental Services
Ruling Number 2011-2800, 2011-2801, 2011-2802
October 28, 2010

This ruling addresses the agency's request for consolidation of the grievant's three grievances for a single hearing. For the reasons discussed below, this Department finds that consolidation of these grievances into a single hearing is appropriate and practicable.

FACTS

The grievant's August 17, 2010 and September 10, 2010 grievances each challenge separate Group II Written Notices dated July 19, 2010 and August 20, 2010 respectively. Both of these Written Notices were based upon the grievant's alleged failure to follow a supervisor's instructions. The third grievance, dated August 26, 2010, challenges a July 28, 2010 Group I Written Notice for unsatisfactory job performance. The Department of Behavioral Health and Developmental Services (the agency) has already qualified the August 17, 2010 and September 10, 2010 grievances for a hearing and requested the appointment of a hearing officer. The August 26, 2010 grievance is proceeding through the management resolution steps and has yet to be qualified for hearing. The agency has requested that all three grievances be consolidated for a single hearing. The grievant objects to this request.

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

This Department finds that consolidation of these three grievances for hearing is appropriate, provided the August 26, 2010 grievance is not resolved during the remaining

¹ *Grievance Procedure Manual* § 8.5.

² *See id.*

resolution steps. All three grievances involve the same grievant and may share common themes, claims, and witnesses. It appears that all three grievances challenge Written Notices that occurred around the same time and led to the grievant's demotion through accumulation of disciplinary actions. Moreover, we find that consolidation is not impracticable in this instance.

While the grievant has no objection to combining his August 17, 2010 and August 26, 2010 grievances, he has objected to consolidating the September 10, 2010 grievance (concerning the Group II Written Notice with demotion) with the others. The grievant feels that given the stress of the process and his work demands, having to prepare for and handle all the grievances at one hearing would be too much of a burden. While we are sympathetic to the grievant's position, we do not feel the burden is too heavy such that the efficiencies created by consolidation should be lost. First, the grievant has some lead time now to begin preparations for hearing. He also has the option of seeking assistance by obtaining representation for the hearing. In addition, the *Grievance Procedure Manual* permits the grievant to request and the agency to provide reasonable administrative leave for the grievant to prepare his grievances for presentation.³ While we do not suggest that such preparation is or should be an easy task here, the effort required should be manageable given the resources and time frame potentially available.

As such, the grievant's August 17, 2010 and September 10, 2010 grievances are consolidated with the August 26, 2010 grievance for a single hearing. Appointment of a hearing officer will occur following completion of the management resolution steps, qualification of the grievance for hearing, and submission of a Form B with appropriate documentation by the agency in the August 26, 2010 grievance.⁴ If either party objects or seeks to proceed with a hearing on the August 17, 2010 and September 10, 2010 grievances together 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.⁵

Claudia T. Farr
Director

³ See *Grievance Procedure Manual* § 8.6.

⁴ If the August 26, 2010 grievance is otherwise resolved or closed prior to hearing, a hearing officer will be appointed in the remaining grievances for hearing on those matters.

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