

Issue: Consolidation of Grievances for a Single Hearing; Ruling Date: March 10, 2011; Ruling No. 2011-2914; Agency: Department of Motor Vehicles; Outcome: Consolidation Not Granted.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

CONSOLIDATION RULING OF DIRECTOR

In the matter of the Department of Motor Vehicles
Ruling Number 2011-2914
March 10, 2011

This ruling addresses the grievant's consolidation request regarding a recent grievance filed with the Department of Motor Vehicles (the agency). For the reasons discussed below, this Department denies the grievant's request.

FACTS

The recent grievance (Grievance 4) at issue in this ruling concerns the grievant's termination on or about February 3, 2011 as a result of her receipt of a Group I Written Notice for performance issues. Grievance 4 is still proceeding through the management resolution steps and has yet to be qualified for hearing. The grievant seeks to consolidate Grievance 4 with three other grievances that have already been qualified for a hearing and previously consolidated in EDR Ruling Numbers 2010-2645, 2010-2646 and EDR Ruling Number 2011-2878. However, the agency objects to the grievant's 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 In this case, there appear to be such persuasive reasons.

While all these grievances involve disciplinary actions of one employee, the previous three grievances primarily concerned the same general issues of alleged misconduct. However, this last grievance concerns dissimilar misconduct and arose in a new work environment. As such, different witnesses and themes appear to be involved. Further, the agency has raised an important issue of potential prejudice should all four grievances be consolidated. Grievance 4 concerns the grievant's termination. Consequently, should the hearing officer in a fully

¹ *Grievance Procedure Manual* § 8.5.

² *See id.*

consolidated hearing find that the evidence supports the grievant's reinstatement, the grievant could be entitled to recover attorney's fees.³ While the grievant has a right to and should recover such fees if successful in Grievance 4, there could be considerably more fees awarded in a fully consolidated case than if Grievance 4 was heard by itself. Although this potential prejudice will not prevent consolidation of multiple grievances in most cases, here, given the number of other grievances involved, the complexity of the questions at issue in those grievances, the length of time since the first grievance was filed, and the dissimilar issues and witnesses involved, the totality of the circumstances supports the agency's objection. Therefore, the grievant's consolidation request is denied. Appointment of a hearing officer will proceed for Grievances 1 – 3 without further delay in a forthcoming letter.

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

Claudia T. Farr
Director

³ See *Grievance Procedure Manual* § 7.2(e).

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