

Issue: Consolidation of grievances for a single hearing; Ruling Date: April 18, 2012; Ruling No. 2012-3324, 2012-3325; 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 2012-3324, 2012-3325
April 18, 2012

This ruling addresses the consolidation of the grievant's February 8, 2012 and March 1, 2012 grievances filed 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

The two grievances at issue concern related matters that led to two Written Notices being issued to the grievant, leading to her termination. After the parties failed to resolve the grievances during the management resolution steps, the agency head qualified the grievances for hearing. The agency has asked for appointment of a hearing officer in these matters and requested consolidation. In qualifying the February 8, 2012 grievance for a hearing, the agency head noted that the grievance should be combined with the March 1, 2012 grievance because they address the "same issues."

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 the grievant's February 8, 2012 and March 1, 2012 grievances is appropriate. These grievances involve the same grievant and could share common themes, claims, and witnesses. The grievances appear to relate to common facts that lead to disciplinary actions issued to the grievant and her termination. Further, we find that consolidation is not impracticable in this instance. Therefore, the

¹ *Grievance Procedure Manual* § 8.5.

² *See id.*

grievant's February 8, 2012 and March 1, 2012 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 apparent partial qualification in these matters. To the extent the "issues" not qualified by the agency head on the Grievance Form A of the February 8, 2012 grievance are merely theories³ advanced by the grievant to support her challenge to the Written Notices and termination, they cannot be severed from her qualified challenge to the Written Notices and termination,⁴ and may be raised at hearing to support her challenge.⁵ 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.⁶

Claudia T. Farr
Director

³ 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.

⁴ *See* EDR Ruling Nos. 2011-2783, 2011-2784, 2011-2797; EDR Ruling Nos. 2009-2127, 2009-2129, 2009-2130.

⁵ *See* EDR Ruling No. 2011-2796.

⁶ *See* Va. Code §§ 2.2-1001(5), 2.2-3003(G).