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QUALIFICATION and CONSOLIDATION RULING

In the matter of the Department of Social Services
Ruling Number 2024-5709
May 16, 2024

The grievant has requested a ruling from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) as to whether his January 16, 2024 grievance with the Department of Social Services (the “agency”) qualifies for a hearing. For the reasons articulated below, the grievance is partially qualified for a hearing. Further, the grievance, as partially qualified, is consolidated with the grievant’s subsequent dismissal grievance, which is currently pending for appointment to a hearing officer.

FACTS

On or about January 16, 2024, the grievant filed a grievance challenging “inaccurate disciplinary action” by the agency (“January Grievance”). In his supporting narrative, the grievant expressed that he did not agree with a Notice of Improvement Needed apparently presented to him on December 29, 2023, as he felt it contained inaccurate information. The grievant also challenged the basis for a Group I Written Notice issued on January 11, 2024. After the grievance proceeded through the management resolution steps with no relief being granted, the agency head’s designee declined to qualify the grievance for a hearing, on grounds that “both the corrective and disciplinary actions were issued appropriately and justly.” The grievant now appeals that determination to EDR.

While the January Grievance was pending, it appears the agency issued two subsequent Group III Written Notices to the grievant, with termination. He timely grieved these disciplinary actions via a separate Dismissal Grievance submitted to EDR on or about March 27, 2024. In response, on April 2, 2024, the agency submitted its Grievance Form B, requesting the appointment of a hearing officer for the Dismissal Grievance. The grievant has requested that the January Grievance be consolidated with the Dismissal Grievance for a single hearing.

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DISCUSSION

Although state employees with access to the grievance procedure may generally grieve anything related to their employment, only certain grievances qualify for a hearing.¹ Actions that automatically qualify for a hearing include the issuance of formal discipline, such as a Written Notice.² More generally, however, the grievance procedure limits grievances that qualify for a hearing to those that involve “adverse employment actions.”³ An adverse employment action involves an act or omission by the employer that results in “harm” or “injury” to an “identifiable term or condition of employment.”⁴

Written Notice

In this case, the parties do not appear to dispute that the agency’s issuance of a formal Written Notice on January 11, 2024 is among the actions challenged by the January Grievance.⁵ Because such formal disciplinary actions automatically qualify for a hearing under the grievance statutes and procedure,⁶ the January Grievance qualifies for a hearing to the extent that it challenges the January 11, 2024 Group I Written Notice.

Notice of Improvement Needed

The January Grievance also challenges a Notice of Improvement Needed that appears to have been issued to the grievant on or about December 29, 2023. A Notice of Improvement Needed is an example of an informal supervisory/corrective action that is not equivalent to a written notice of formal discipline.⁷ It does not generally rise to the level of an adverse employment action because such an action, in and of itself, does not negatively affect the terms, conditions, or benefits of employment. Although it appears that the agency subsequently took adverse actions against the grievant in the form of Written Notices, the grievance record before EDR does not indicate that the Notice of Improvement Needed itself affected the grievant’s terms or conditions of employment.

Accordingly, the January Grievance is not qualified to the extent it challenges the Notice of Improvement Needed as an independent issue. However, although the appointed hearing officer need not address the Notice as an independent issue, they may admit evidence regarding the Notice to the extent such evidence is relevant to any qualified issues (that is, the January 11, 2024 Written

¹ See *Grievance Procedure Manual* § 4.1.

² *Id.* § 4.1(a); see Va. Code § 2.2-3004(A).

³ See *Grievance Procedure Manual* § 4.1(b).

⁴ See *Muldrow v. City of St. Louis*, 144 S. Ct. 967, 974 (2024) (addressing a required element of a Title VII discrimination claim); see, e.g., *Burlington Indus. v. Ellerth*, 524 U.S. 742, 761 (1998) (defining adverse employment actions under Title VII to include “tangible” acts “such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits”).

⁵ See DHRM Policy 1.60, *Standards of Conduct*, at 7 (identifying a Written Notice as a “disciplinary action” that is “formal” in nature, as opposed to “corrective”).

⁶ Va. Code § 2.2-3004(A); *Grievance Procedure Manual* § 4.1(a).

⁷ See DHRM Policy 1.60, *Standards of Conduct*, at 6-7.

Notice and the subsequent Written Notices associated with the grievant's dismissal) and related claims, including any affirmative defenses offered by the grievant.

Consolidation

The grievant has requested that the January Grievance, to the extent it is qualified for a hearing, be consolidated with his pending Dismissal Grievance, and the agency has expressed no objection. Approval by EDR in the form of a compliance ruling is required before two or more grievances may be consolidated into a single hearing. 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.⁸

Upon review of the available information for the grievances filed respectively on January 16 and March 27, 2024, EDR finds that consolidation of these two grievances is appropriate. These grievances involve the same parties and appear likely to share common themes, claims, and witnesses. Further, we find that consolidation is not impracticable in this instance. Therefore, the January 16 Grievance, as partially qualified as described above, is consolidated with the March 27 Dismissal Grievance to be heard in a single proceeding.⁹ A hearing officer will be appointed via forthcoming correspondence to be distributed to the parties.

EDR's rulings on qualification and consolidation are final and nonappealable.¹⁰

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⁸ *Grievance Procedure Manual* § 8.5.

⁹ Pursuant to the fee schedule established by EDR's Hearings Program Administration policy, consolidated hearings shall be assessed a full fee of \$5,000 for two consolidated grievances, and an additional fee of \$500 for each additional consolidated grievance. See EDR Policy 2.01, *Hearings Program Administration*, Attach. B.

¹⁰ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).