

Issue: Qualification – Discipline (Written Notice); Ruling Date: June 21, 2018; Ruling No. 2018-4748; Agency: Department of Veterans Affairs; Outcome: Qualified.



**COMMONWEALTH of VIRGINIA**  
**Department of Human Resource Management**  
*Office of Equal Employment and Dispute Resolution*

**QUALIFICATION RULING**

In the matter of the Department of Veterans Services  
Ruling Number 2018-4748  
June 21, 2018

The grievant has requested a ruling from the Office of Equal Employment and Dispute Resolution (“EEDR”) at the Department of Human Resource Management on whether her April 23, 2018 grievance with the Department of Veterans Services (the “agency”) qualifies for a hearing. For the reasons set forth below, this grievance is qualified for a hearing in full.

The grievant is employed by the agency as an Outreach Coordinator. On April 12, 2018, she was issued a Group I Written Notice for allegedly leaving work without permission and failing to follow instructions and/or policy. She initiated a grievance on or about April 23, 2018, challenging the issuance of the Group I Written Notice. After proceeding through the management resolution steps, the agency declined to qualify the grievance for a hearing. The grievant now appeals that determination to EEDR.

Under the grievance procedure, all formal disciplinary actions **automatically** qualify for a hearing.<sup>1</sup> It is clear from the face of the Grievance Form A in this particular instance that the Group I Written Notice is raised as an issue, and the management step responses demonstrate this fact as well. The agency offers no reason as to why it would decline to qualify this grievance, and after a review of the grievance packet, EEDR is unable to locate any justification for doing so. Consequently, as it challenges a Written Notice, the April 23, 2018 grievance is qualified in full for a hearing.

At the hearing, the agency will have the burden of proving that the Written Notice was “warranted and appropriate under the circumstances.”<sup>2</sup> The employee will have the burden of raising and establishing any affirmative defenses, as well as any evidence of mitigating circumstances.<sup>3</sup> This ruling in no way determines whether the agency’s actions in issuing the Written Notice were proper, but merely reflects that further exploration of the facts by a hearing officer is warranted.

---

<sup>1</sup> *Grievance Procedure Manual* § 4.1(a); *see also* Va. Code § 2.2-3004(A).

<sup>2</sup> *Grievance Procedure Manual* § 5.8.

<sup>3</sup> *Id.*

CONCLUSION

The grievant's April 23, 2018 grievance is qualified for hearing in full. Within five workdays of receipt of this ruling, the agency shall request the appointment of a hearing officer to hear those claims qualified for hearing using the Grievance Form B.

EEDR's qualification rulings are final and nonappealable.<sup>4</sup>



---

Christopher M. Grab  
Director  
Office of Equal Employment and Dispute Resolution

---

<sup>4</sup> Va. Code § 2.2-1202.1(5).