

Issue: Qualification – Benefits/Leave (LWOP) and Compensation (Reimbursement/
Salary Dispute); Ruling Date: February 13, 2013; Ruling No. 2013-3512; Agency:
Virginia Community College System; Outcome: Not Qualified.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Employment Dispute Resolution

QUALIFICATION RULING

In the matter of the Virginia Community College System
EDR Ruling Number 2013-3512
February 13, 2013

The grievant has requested a ruling on whether her November 27, 2012 grievance with the Virginia Community College System (the agency) qualifies for a hearing. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

The grievant is employed as a Housekeeper with the agency. Since April 16, 2012, the grievant has been out of work for numerous personal and medical reasons. The grievant alleges that she completed the appropriate leave slips for her absences and submitted the leave slips to her supervisor for his approval. She alleges her supervisor did not forward the leave slips to payroll for entry in a timely manner. Consequently, she did not have an accurate record of her leave balances.

When the agency reconciled its leave records in November 2012, discrepancies were detected between the leave earned and the leave taken by the grievant. The agency determined the grievant was actually "in a leave without pay status and actually had received pay for 102 hours in excess of what she should have received." After discussing this discrepancy with the grievant, "it was determined that the bulk of the repayment would be deducted on the December 1, 2012 payroll that coincided with the 3% bonus to help mitigate her loss of wages." However, the entire repayment amount could not be repaid during that payroll. As such, the agency incrementally reduced the grievant's subsequent payrolls to account for the overpayment. The grievant asserts that the human resource department did not have the right to require the grievant to repay the agency for the overpayment without her consent.

On November 27, 2012, the grievant initiated a grievance alleging the repayment was unfair because the agency failed to inform the grievant of the discrepancies in a timely manner. The November 27th grievance proceeded through the management resolution steps without resolution and was denied qualification by the agency head on January 2, 2013. The grievant now seeks a qualification determination from EDR.

DISCUSSION

The grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.¹ Further, complaints relating solely to the establishment or revision of wages, salaries, position classifications, or general benefits “shall not proceed to a hearing”² unless there is sufficient evidence of discrimination, retaliation, discipline, or a misapplication or unfair application of policy.³ In this case, the grievant claims that the agency misapplied or unfairly applied policy by requiring the grievant to repay the overpayment, which, she asserts, was not her fault.

For an allegation of misapplication of policy or unfair application of policy to qualify for a hearing, there must be facts that raise a sufficient question as to whether management violated a mandatory policy provision, or whether the challenged action, in its totality, was so unfair as to amount to a disregard of the intent of the applicable policy. Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve “adverse employment actions.”⁴ Thus, typically, a threshold question is whether the grievant has suffered an adverse employment action. An adverse employment action is defined as a “tangible employment action constitut[ing] a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.”⁵ Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one’s employment.⁶ For purposes of this ruling only, it will be assumed that the grievant has alleged an adverse employment action in that she asserts issues with her compensation.

In this case, the agency’s decision to recoup the overpayment identified by payroll does not appear to have violated policy. After reviewing the leave records and accounting provided by the agency and the grievant, it appears the grievant was overpaid for 102 hours in which she did not work.⁷ Indeed, both Virginia statutory law⁸ and the Department of Accounts’ CAPP

¹ See Va. Code § 2.2-3004(B).

² Va. Code § 2.2-3004(C).

³ *Grievance Procedure Manual* § 4.1(c).

⁴ See *Grievance Procedure Manual* § 4.1(b).

⁵ *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

⁶ *Holland v. Washington Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007).

⁷ EDR reviewed the official pay records submitted by the grievant, the grievant’s supervisor’s leave records for the grievant, the grievant’s leave slips for April 23, 2012, May 1, 2012, May 4, 2012, June 28 – July 2, 2012, August 17-20, 2012, and September 27-28, 2012, and the agency’s accounting records which accurately reflect the grievant was overpaid for 102 hours. Although the grievant’s official pay records reflect annual, sick, and family/personal leave balances, the agency admits this is because payroll failed to notify the leave administrator to change the grievant’s records to a zero leave balance after the November 2012 reconciliation occurred. The agency states that it intends to correct this error. Furthermore, the agency also admits that at the time the grievant’s leave discrepancies started, the grievant’s supervisor “was new and his immediate supervisor was out on medical leave. He was not aware of how the process really worked and did not get the information to [HR]. Since HR was not notified of [the grievant’s] time missed, [HR was] not able to update [the grievant’s] leave records accordingly. The Supervisor now knows how the system works.”

⁸ See Va. Code § 2.2-804.

Manual⁹ appear to authorize (and indeed require in the case of the CAPP Manual) recovery of such overpayments. In addition, it appears the agency was reasonable in providing a repayment option to the grievant that mitigated the grievant's loss of wages.¹⁰ Under state policy, and in the absence of a full lump sum repayment, an overpayment amount must be collected over a period not to exceed the period during which the overpayment occurred.¹¹ Thus, based on the totality of the circumstances, the grievant has not presented evidence raising a sufficient question that any policies have been either misapplied and/or unfairly applied and EDR finds this grievance does not qualify for hearing.¹²

EDR's qualification and compliance rulings are final and nonappealable.¹³



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⁹ See CAPP Manual, No. 50510, *Unpaid Leaves of Absences and Overpayments*, at 5 (stating that agencies "must take appropriate steps to collect" overpayments due to incorrect paperwork). The CAPP Manual also provides that the maximum period of repayment is the period of overpayment. *Id.* Thus, the agency may have flexibility to offer the grievant a relatively lengthy period of repayment if that would satisfy both parties' financial concerns.

¹⁰ See, e.g., EDR Ruling No. 2011-2851; EDR Ruling No. 2011-2845; and EDR Ruling No. 2010-2641.

¹¹ CAPP Manual, No. 50510, *Unpaid Leaves of Absences and Overpayments*, at 5.

¹² This ruling only determines that under the grievance statutes this grievance does not qualify for a hearing. This ruling does not address whether the grievant may have some other legal or equitable remedy or defense regarding the agency's recovery of the overpayment or the method thereof.

¹³ Va. Code § 2.2-1202.1(5).