

Issue: Qualification – Benefits/Leave (compensatory leave); Ruling Date: June 11, 2013; Ruling No. 2013-3621; Agency: Department of Corrections; Outcome: Not Qualified.



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

QUALIFICATION RULING

In the matter of the Department of Corrections
Ruling Number 2013-3621
June 11, 2013

The grievant has requested a ruling on whether her March 6, 2013 grievance with the Department of Corrections (the “agency”) qualifies for a hearing. For the reasons discussed below, this grievance is not qualified for a hearing.

FACTS

The grievance involves the expiration of sixteen hours of the grievant’s accrued compensatory leave. On or about February 7, 2012 the grievant became aware that her compensatory leave had expired. She requested that the agency reinstate her compensatory leave, and the agency refused.¹ On or about March 6, 2013 the grievant initiated a grievance to challenge the agency’s decision not to reinstate the expired leave. After proceeding through the management steps, the agency head declined to qualify the grievance for a hearing. The grievant now appeals that determination to the Office of Employment Dispute Resolution (“EDR”).

DISCUSSION

By statute and under the grievance procedure, management reserves the exclusive right to manage the affairs and operations of state government.² Thus, complaints relating solely to the establishment and revision of salaries, wages, and general benefits “shall not proceed to hearing”³ unless there is sufficient evidence of discrimination, retaliation, unwarranted discipline, or a misapplication or unfair application of policy. The grievant has not alleged discrimination, retaliation, or discipline. Therefore, the grievant’s claims could only qualify for hearing based upon a theory that the agency has misapplied or unfairly applied policy.

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

¹ The grievant stated that she attempted to use some of the compensatory to take December 13, 2012 off, but the agency denied her leave request.

² See Va. Code § 2.2-3004(B).

³ Va. Code § 2.2-3004(C).

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 use and retention of leave.

The grievant alleges, essentially, that the agency has incorrectly applied policy by failing to reinstate her expired compensatory leave. However, the grievant has not identified, and EDR has not found, a mandatory policy provision that the agency has violated. On the contrary, the agency’s policy expressly states that “[e]ach employee is accountable for knowing his or her correct leave balance,” and that compensatory leave expires twelve months after it accrues.⁷ The grievant also claims that the agency has previously reinstated expired compensatory leave for at least one other employee. The agency, however, appears to have attempted an adjustment of the grievant’s annual leave and recognition leave balances, to the extent that it could do so, to make up a portion of the expired compensatory leave. Because of the grievant’s annual leave balance, the maximum adjustment that the agency could offer without exceeding her maximum carryover amount for the year was 0.4 hours. The agency was also able to modify the grievant’s recognition leave balance by adding two additional hours. Other than the combined 2.4 hours of annual and recognition leave, the agency could not modify the grievant’s leave balances to reinstate the expired compensatory leave.⁸ Unlike the grievant, the employee she references had other leave types that the agency adjusted for the full amount of compensatory leave. For these reasons, EDR concludes that the grievance does not raise a sufficient question that any policies have been either misapplied or unfairly applied. As a result, the grievance does not qualify for a hearing.

EDR’s qualification rulings are final and nonappealable.⁹



Christopher M. Grab
Director
Office of Employment Dispute Resolution

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 Department of Corrections Operating Procedure 110.1, *Hours of Work and Leaves of Absence*, §§ IV(G)(4)(b), IV(O)(3).

⁸ It is unclear whether the grievant was offered, or accepted, the 2.4-hour adjustment.

⁹ Va. Code § 2.2-1202.1(5).