

Issue: Qualification – Discipline (failure to follow instructions/policy); Ruling Date: February 10, 2016; Ruling No. 2016-4300; Agency: Department of Veterans Services; Outcome: Qualified in Full.



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

QUALIFICATION RULING

In the matter of the Department of Veterans Services
Ruling Number 2016-4300
February 10, 2016

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether her January 19, 2016 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 a Unit Secretary. On or about January 14, 2016, she was issued a Group I Written Notice for allegedly failing to follow instructions regarding the use of the time clock for lunch breaks. She filed a grievance on or about January 19, 2016, 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 EDR.

By statute and under the grievance procedure, all formal disciplinary actions automatically qualify for a hearing.¹ 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. Consequently, the grievant’s challenge to the Written Notice on the January 19, 2016 grievance is qualified for a hearing.²

At the hearing, the agency will have the burden of proving that the Written Notice was “warranted and appropriate under the circumstances.”³ The employee will have the burden of raising and establishing any affirmative defenses, as well as any evidence of mitigating circumstances.⁴ 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.

¹ Va. Code § 2.2-3004(A); *Grievance Procedure Manual* § 4.1(a).

² The grievant also sent to EDR an additional letter, requesting certain information from the agency. As this matter will be addressed at hearing, the grievant is free to raise this request with the hearing officer, who has the authority to order production of relevant documentation. *See Rules for Conducting Grievance Hearings* § III(E).

³ *Grievance Procedure Manual* § 5.8.

⁴ *Id.*

CONCLUSION

The grievant's January 19, 2016 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.

EDR's qualification rulings are final and nonappealable.⁵



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⁵ See Va. Code § 2.2-1202.1(5).