

Issue: Qualification-Annual Leave; Ruling Date: March 18, 2002; Ruling #2001-155;
Agency: Department of Juvenile Justice; Outcome-qualified for hearing.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of the Department of Juvenile Justice/ No. 2001-155
March 18, 2002

The grievant has requested a ruling on whether her May 1, 2001 grievance with the Department of Juvenile Justice (DJJ or agency) qualifies for a hearing. She claims that the agency has misapplied policy by improperly docking her paycheck. For the reasons set forth below, her grievance is qualified for hearing.

FACTS

The grievant is employed by DJJ as a Corrections Officer. On April 30, 2001, DJJ informed the grievant that due to insufficient leave balances, she had received a gross salary overpayment of \$631.81. The agency asserts that the alleged overpayment occurred between January 23, and April 17, 2001.

As a result of purported overpayments, the agency informed the grievant that it intended to deduct, beginning on May 1, 2001, \$157.95 from her paycheck. Similar deductions would continue through June 16, 2001, when a fourth and final payment of \$157.96 would repay the alleged debt.

The agency concedes that it failed to maintain accurate leave records for an extended period of time. However, as soon as management discovered that leave was not being accurately recorded, it took corrective action against the individual responsible for the record-keeping deficiencies. Furthermore, since the discovery of the recording irregularities, the agency has ordered the auditing of the grievant's and other DJJ employees' leave balances by internal and external auditors on several occasions.

DISCUSSION

Misapplication of 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.

The grievant essentially claims that DJJ's accounting of her leave balance is not accurate and the docking of her pay was improper. The agency concedes that the agency "failed to maintain accurate leave records for [the grievant] and other employees for an extended period of time."¹ Furthermore, several subsequent leave audits, both internal and external, have yielded various results as to actual balances.² The most recent audit, performed by an auditor not affiliated with the agency, revealed a number of errors with the grievant's leave. The net result of the independent audit, which covered a period dating back several years, was that the total number of hours the grievant allegedly owed back to the agency was reduced from 112.6 to 88.6.³

Based on the independent auditor's findings and the agency's own recognition that leave was not properly recorded, there is a sufficient question of fact as to whether the agency's docking of the grievant's pay was appropriate and in accordance with policy. Therefore, the grievance is qualified for hearing.⁴

OTHER INFORMATION

For information regarding the actions the grievant may take as a result of this ruling, please refer to the enclosed sheet.

Neil A. G. McPhie, Esq.
Director

William G. Anderson, Jr.
Employment Relations Consultant

¹ Agency Head's qualification decision.

² The leave records were reviewed internally by agency personnel analysts. The agency's internal auditor then reviewed the records and found inconsistencies. An external auditor finally reviewed the records.

³ The agency has apparently not yet adjusted the grievant's pay to reflect the independent auditor's findings.

⁴ It should be noted that there is no evidence of bad faith on the part of the agency. Once management discovered that leave was not being properly recorded it immediately took corrective action including numerous audits to determine the actual amounts owed or due.