

Issue: Qualification-Methods/Means-Training, Work Conditions-Management Practices
– Records, Confidentiality, Access to Policy; Ruling Date: January 15, 2002; Ruling
#2001-223; Agency: Mary Washington College; Outcome: Not qualified



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Mary Washington College/ No. 2001-223
January 15, 2002

The grievant has requested a ruling on whether his September 25, 2001 grievance with Mary Washington College qualifies for a hearing. The grievant asserts that two of his supervisors unfairly applied or misapplied established departmental policies and failed to follow the "chain of command." As relief, he requests that disciplinary action be taken against the two supervisors. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

The grievant is employed by Mary Washington College as a Police Officer. He alleges that during police officer training, sometime during the period of August 8, 2001 through September 24, 2001, two of his supervisors told police trainees to stay away from him, that he had bad habits, and that he was a bad influence on others. The grievant asserts that two of the trainees present told him about this incident. The grievant alleges that he informally met with the person who serves in the second-step respondent role (before initiating his grievance), who did not offer to provide the grievant with the relief he sought. The grievant then met informally with the two supervisors who allegedly made the comments, who, the grievant alleges, would not address the issues with him. One of the two supervisors asserts that during that meeting the policies of the department and the grievance procedure were discussed. The grievant then filed his September 25, 2001 grievance. During the grievance process, both the first-step respondent and the second-step respondent noted that the grievance had merit and that remedial action in the form of counseling had been taken by the second-step respondent. The agency head issued a decision not to qualify the grievance for a hearing and that decision was appealed to this agency.

DISCUSSION

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. If a claim of unfair application of policy or policy misapplication is qualified and proven at a hearing, the relief that a hearing officer can order is limited and may include directing the agency to comply with applicable policy.¹ A hearing officer may not order damages or attorney's fees, or any other prospective relief.

I. Failure to Follow Chain of Command

The grievant claims that the department's policies were misapplied or unfairly applied when his two supervisors failed to follow the chain of command. He specifically asserts that the two supervisors refused to address his claim regarding comments about his individual performance to trainees. The grievant contends that this policy requires the supervisors to address the issue with him. The applicable policies in this case are found in the *Mary Washington College Police Department Operations Manual*, which states in pertinent part:

Employees are expected to follow the chain of command for all purposes unless there is a serious threat to the efficiency of the Department and a matter must be resolved before the employee's supervisor can be consulted. All personnel are expected to give every other member of the Department the respect and cooperation due their rank. The Chief of Police will discuss any Department matter with any employee; however, employees are expected to follow the chain of command before the matter is brought to the attention of the Chief.²

From the facts described above, the grievant has presented no evidence that shows that his two supervisors failed to follow the chain of command policy by refusing to address the issue of comments to trainees about the grievant's performance. The chain of command policy establishes a procedure by which employees who are subordinate in rank are required to contact the next highest-ranking officer.³ Furthermore, the policy does not prohibit higher-ranking officers from meeting with a lower ranking employee. Accordingly, this policy is not applicable to the grievant's grievance and this issue does not qualify for a hearing.

II. Violation of Established Departmental Policies

In addition, grievant asserts that his supervisors unfairly applied or misapplied agency policy by violating established departmental policies. The applicable policies in

¹ See *Grievance Procedure Manual* § 5.9(a)(5), page 15.

² See *Mary Washington College Police Department Operations Manual*, page 1.07.

³ *Id.*

this case are also found in the *Mary Washington College Police Department Operations Manual*. The following are the applicable policies:

IV. General Duties

B. Obedience to law, ordinances, rules, regulations.

1. Employees of the department . . . will obey all rules, regulations, directives, and orders as may be issued by the department or Mary Washington College.

C. Disciplinary Actions

2. As appropriate, disciplinary action may be taken for any of the following reasons:

- b. Insubordination, discourteous treatment of the public or a fellow employee
- e. Failure to report to an appropriate superior authority . . . any form of misconduct

D. General Conduct

1. Employees of the department will display respect for their superior officers, subordinates, and associates. When on-duty and in the presence of the public, superior officers shall be addressed or referred to by rank.
4. Employees of the department will not gossip or speak rumors detrimental to the department or another employee.⁴

Thus, under departmental policy, employees are required to treat one another with courtesy and respect, and to refrain from gossiping about fellow employees. Furthermore, under departmental policy, in *appropriate circumstances*, disciplinary action *may* be taken for discourteous treatment of another employee.

The second-step respondent recognized in his second-step response that the identification of a specific officer during training was “not in accord with state policy.” However, there are some cases where qualification is inappropriate even if an agency may have misapplied policy. For example, during the resolution steps, an issue may have become moot, either because the agency granted the specific relief requested by the grievant or an interim event prevents a hearing officer from being able to grant any meaningful relief. Additionally, qualification may be inappropriate where the hearing

⁴ See *Mary Washington College Police Department Operations Manual*, pages 1.09.3 - 1.09.7.

officer does not have the authority to grant the relief requested by the grievant and no other effectual relief is available.

This is a case where the requested relief is not permitted and other effectual relief is unavailable. The only relief requested by the grievant was that those who may have violated policy receive the maximum available punishment. Hearing officers do not have the authority to order disciplinary actions against other employees. Furthermore, the agency has already counseled those individuals who allegedly violated policy. Therefore, because a hearing could not provide the grievant with any further meaningful relief, this grievance is not qualified for hearing.

CONCLUSION

For the reasons discussed above, this grievance is not qualified for a hearing. 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