

Summary: Compliance and Qualification-30 day Rule- Leave-Involuntary Charging;
Ruling Date: May 14, 2002; Ruling #2001-224; Agency: Department of Corrections;
Outcome: Grievant out of compliance, issues not qualified.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

**COMPLIANCE AND QUALIFICATION RULINGS
OF DIRECTOR**

In the matter of Department of Corrections/ No. 2001-224
May 14, 2002

The grievant has requested a ruling on whether his October 29, 2001 grievance with the Department of Corrections (DOC) qualifies for a hearing. The grievant claims that management misapplied or unfairly applied state and agency leave policies by placing him in Leave Without Pay (LWOP) status without prior notification. The agency claims that the grievance is out of compliance with the grievance procedure because it was untimely filed. For the reasons discussed below, this Department finds that the grievance was timely filed. However, the issues presented in his grievance do not qualify for a hearing.

FACTS

The grievant has been employed by DOC for 18 years and is currently a Corrections Officer. On several occasions during the months of August, September, and October of 2001, the grievant left work early, assuming that he had enough leave time to cover the hours missed.¹ However, upon receiving a paycheck reflecting a loss of pay, he initiated this grievance, challenging the agency's application of state and agency leave policies. He acknowledges that he was not keeping up with his leave balances, but assumed that he had ample leave, based on the number of overtime hours he works. In fact, the grievant had exhausted his leave time, and was being placed on LWOP status.

At the facility where the grievant is employed, employees are to keep track of their hours and leave time by initialing a roster. Using the roster, the Human Resources Department completes a 28-day Cycle Sheet for each employee, reflecting hours worked and leave time taken. DOC maintains that the grievant simply made a mistake in reviewing his Cycle Sheets and calculating his leave time. The grievant argues that the agency's manner of tracking time results in inaccuracies, and that if he had exhausted his leave time, the agency should not have let him take more time off, as LWOP. He also argues that he was not familiar with the time and leave tracking system used at his facility, having worked at other DOC facilities that used other systems.

¹ The grievant claims that his supervisor had ordered him to leave work on at least five different occasions and therefore his annual leave time should not have been charged. During the second step meeting, however, six officers verified that the supervisor had not ordered staff to leave early; rather, staff had been given the option to leave, using overtime or annual leave to cover the hours missed at work.

He requests that he be reimbursed for his loss of pay and for his loss of earned leave time while on LWOP.² The agency head denied qualification for a hearing, claiming that the grievance is untimely because it was filed more than 30 calendar days after the event that formed the basis of the grievance, which management claims was in August, when the grievant's pay was first docked.

DISCUSSION

Although the grievant requested a qualification ruling, the reason given by the agency head for not qualifying the grievance was that it was filed outside the 30-calendar day timeframe. Therefore, as a threshold matter, this ruling must address the compliance issue of timeliness.

Compliance

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date he knew or should have known of the event or action that is the basis of the grievance, unless there is just cause for the delay.³ When an employee initiates a grievance beyond the 30 calendar day period without just cause, the grievance is not in compliance with the grievance procedure and may be administratively closed.

On October 29, 2001, the grievant in this case filed his grievance alleging that DOC improperly docked 21.5 hours of pay for time taken off in August, September, and October. His 30 calendar day time period commenced on the date he first "knew or should have known" his pay had been docked. The grievant asserts that the trigger date occurred in October, when his paycheck first reflected that he had lost pay. The agency asserts, however, that this "knew or should have known" trigger date occurred in August when the grievant was first placed on LWOP status after using up all of his annual leave (although his pay had not yet been docked).

State policy expressly states that every employee is responsible for knowing what his leave balances are.⁴ Furthermore, DOC notes (i) that the grievant signed an update of his Annual Leave Statement in June, verifying that he knew how much annual leave he had, and (ii) that leave balances are provided in every paycheck, so the grievant should have known the status of his leave balances. However, during this Department's investigation, the agency acknowledged that the paycheck balances are often a month or two behind, and that employees know that they should not rely on those figures. Indeed, it appears from the grievant's pay stubs that he had ample annual leave, although he did

² While on LWOP, an employee does not accumulate annual leave. DHRM Policy 4.45.

³ See Va. Code §2.2-3003 (C); *Grievance Procedure Manual* § 2.4(1), page 6.

⁴ DHRM Policy 4.30III(D)(2). State policy further provides that employees will be required to reimburse their agencies for time taken off from work if they did not have sufficient accrued leave to cover such time off. *Id.*

not. Moreover, his paychecks did not reflect his loss of annual leave accrual until November 16, 2001, even though he was first charged with LWOP in August.

In light of the above, we conclude that the grievant did not know (nor should he have known) that his pay had been docked until October 16, 2001 when his paycheck reflected a loss of pay. Therefore, the appropriate trigger date for this grievance was October 16. Because the grievant initiated his grievance on October 29, he filed it well within the 30 calendar day requirement.

Qualification

Under state and agency policy, an employee may receive paid compensatory leave for “additional hours in a workweek; having worked on an official office closing day, a holiday, or a scheduled day off; or when a holiday falls on an employee’s scheduled day off.”⁵ During this Department’s investigation, DOC reported that compensatory time is granted when employees work on holidays or on days with inclement weather. Similarly, when employees work overtime during a 28-day cycle, they may use overtime rest (OTR) hours to balance out their hours during that cycle. DOC stated that all time must be earned before it is used.⁶ Additionally, annual leave may be used for vacations and other personal reasons.⁷ Annual leave accrues every pay period and may not be used until it is earned.⁸

It appears from the agency’s roster and from the grievant’s 28-day Cycle Sheets that the grievant was attempting to use compensatory time or annual leave time for his absences from work when the agency was docking him for those hours. In the cycle that ran 7/16/01 through 8/12/01, the grievant earned and used 8.9 hours of overtime leave. He used 13 hours of annual leave, leaving him with a balance of 5 hours. In the next cycle, running 8/13/01 through 9/9/01, the grievant earned and used 20.5 hours of overtime leave and had an annual leave balance of 12 hours. However, he attempted to use 23.1 hours of annual leave, and as a result was charged LWOP on three occasions, for a total of 11.1 hours. For the 9/10/01 - 10/7/01 cycle, the grievant had no annual leave or compensatory time.⁹ During this period, he attempted to take 10.4 hours of annual and compensatory time, but was docked for those hours. Therefore, it appears that the grievant made a mistake in calculating the amount of leave time that he was allowed to take for the months of August, September, and October. As a result of those mistakes, the grievant was given LWOP for a total of 21.5 hours.

⁵ DHRM Policy No. 3.10 III(A). *See also* Internal Operating Procedure 5-12, “Hours of Work and Leaves of Absences,” page 7.

⁶ An exception occurs when an employee earns overtime hours at the end of the 28-day cycle. When this occurs, the employee may substitute overtime rest hours for compensatory time taken earlier in the cycle, and use the compensatory time later.

⁷ DHRM Policy No. 4.10.

⁸ *Id.* Based on his years of service with the Commonwealth, the grievant earns 7 hours of annual leave each pay period.

⁹ Although he had earned 1.9 hours of overtime leave by the end of that cycle, he could not apply the 1.9 hours against his balance during that same cycle.

State policy requires that “[a]gencies may not approve *paid* leaves of absence to be taken in a pay period in which an employee does not have sufficient accrued leave to cover the absence.”¹⁰ The policy further requires that employees who use leave when none is available to them must reimburse the agencies for the time taken.¹¹ Thus, in this case, DOC acted in accordance with policy and properly placed the grievant in LWOP status when he ran out of leave time to cover his absences. Therefore, with respect to his placement on LWOP, the grievant’s misapplication of policy claim does not qualify for a hearing.

Finally, the grievant argues that DOC should have notified him that they were docking his pay in August and that had he known he was out of leave time, he would not have continued to take time off from work. According to state and agency policy, there are two varieties of LWOP.¹² The first kind, conditional, may result in discharge if the position is not available when the employee returns from LWOP. The second, unconditional, guarantees reinstatement. The grievant’s status on LWOP was unconditional. Policy requires that notice be given to employees for *conditional* LWOP, but does not require the agency to notify the employee for unconditional LWOP.¹³ Because state and agency policies do not require notice, DOC cannot be found to have misapplied policy.

APPEAL RIGHTS AND OTHER INFORMATION

For information regarding the actions the grievant may take as a result of this ruling, please refer to the enclosed sheet. If the grievant wishes to appeal this determination to the circuit court, he should notify the human resources office, in writing, within five workdays of receipt of this ruling. If the court should qualify this grievance, within five workdays of receipt of the court’s decision, the agency will request the appointment of a hearing officer unless the grievant notifies the agency that she does not wish to proceed.

Claudia T. Farr
Director

Leigh A. Brabrand
Employment Relations Consultant

¹⁰ DHRM Policy 4.30 III(D)(1).

¹¹ DHRM Policy 4.30 III(D)(2).

¹² DHRM Policy No. 4.45.

¹³ *Id.*