

Issue: Qualification-Military leave; Ruling Date: February 26, 2002; Ruling #2001-233; Agency: Department of Corrections; Outcome: Not qualified. Appeal filed to Circuit Court of Bland County on March 7, 2002; Case #CL-02-06; EDR Decision affirmed; order entered June 6, 2002.



*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Corrections/ No. 2001-233  
February 26, 2002

The grievant has requested a ruling on whether his October 24, 2001 grievance with the Department of Corrections (DOC) qualifies for a hearing. The grievant claims that management unfairly applied military leave policy. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

The grievant is a Correctional Officer with DOC. He is also an Army Reservist with the United States Military, which requires him to spend one weekend a month in military training ("drill"). According to the state's policy regarding military leave, employees "shall be granted up to 15 workdays (120 hours) of military leave with pay in a federal fiscal year for the duty required in their military orders."<sup>1</sup> The policy further states that once those 15 workdays are exhausted, employees "shall be granted unconditional military leave without pay."<sup>2</sup> The grievant asserts that he and other employees who are required to work on weekends, and who also serve in the Reserves, run out of paid military leave time in five or six months, and are then required to use military leave without pay. Conversely, employees with similar military obligations, and who do not work on weekends in their state jobs, rarely use up their paid military leave time.<sup>3</sup> The grievant asserts that, as this policy is currently written, those not required to work on Saturdays and Sundays have an advantage over those on a rotating schedule, and proposes an alternative that would be fair for all employees.<sup>4</sup> Management stated that the policy is applied fairly and consistently for all employees, and

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<sup>1</sup> DHRM Policy 4.50.

<sup>2</sup> *Id.* "Unconditional" leave without pay means that reinstatement is guaranteed after taking leave without pay. DHRM Policy 4.45. While on military leave without pay, employees do not accrue sick or annual leave. DHRM Policy 4.50.

<sup>3</sup> Specifically, he claims that those on a rotating shift (who work weekends) use a total of 276 hours annually, while those on a 5 and 2 schedule (not working weekends) use 96 hours.

<sup>4</sup> He suggests a plan similar to the "use it or lose it" sick leave policy, granting 16 hours per month and 80 hours during summer drill for military leave.

denied qualification for a hearing, claiming that the grievance merely challenges the content of the military leave policy.

### DISCUSSION

By statute and under the grievance procedure, management reserves the exclusive right to manage the affairs and operations of state government.<sup>5</sup> Thus, all claims relating to issues such as the means, methods, and personnel by which work activities are to be carried out, and the transfer, reassignment, or scheduling of employees within the agency generally do not qualify for hearing, unless the grievant presents evidence raising a sufficient question as to whether discrimination, retaliation, or discipline may have improperly influenced management's decision, or whether state policy may have been misapplied.<sup>6</sup>

In this case, the grievant asserts that the DHRM Policy 4.50 is not applied equally to all employees. However, there are no facts to support the position that management misapplied policy or applied policy unfairly. Indeed, the grievant is, in essence, disputing the contents of the policy, not its application. The grievant is not arguing that the policy is *applied* unfairly, rather, he is arguing that the policy *is* unfair, because of its inequitable results. He even suggests a way in which the policy's content could be amended to alleviate the differences in how employees are affected by the policy. However, the grievance procedure expressly excludes challenges to the "contents of . . . personnel policies" from qualification, unless there is some support for a claim of discrimination, retaliation, or discipline.<sup>7</sup> The grievant asserts no such claim in this instance. Accordingly, this issue does not qualify for hearing.

It is true that DHRM Policy 4.50, as applied to all state employees, affects those on rotating shifts differently than it affects those who do not work on weekends. However, concerns about the contents of state policies are more appropriately addressed to the Department of Human Resource Management, the state agency that, by statute, has the authority to promulgate and interpret state personnel policies.<sup>8</sup>

### 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 must notify his Human Resources Office, in writing, within five workdays of his receipt of this ruling. If the court should

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<sup>5</sup> Va. Code § 2.2-3004(B).

<sup>6</sup> Va. Code § 2.2-3004(A) and (C); *Grievance Procedure Manual* § 4.1(b) and (c), pages 10-11.

<sup>7</sup> *Grievance Procedure Manual* § 4.1(c), page 11.

<sup>8</sup> Va. Code § 2.2-1201(13).

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qualify this grievance, within five workdays of receipt of the court's decision, the agency must request the appointment of a hearing officer, unless the grievant notifies the agency that he does not wish to proceed.

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