

Summary: Qualification-Compensation/Leave-Sick Leave, Family Personal Leave; Methods/Means (other); Work Conditions-Supervisory Conflict; Ruling Date: April 25, 2002; Ruling #2002-006; Agency: Department of Social Services; Outcome: Not qualified.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Social Services/ No. 2002-006

April 25, 2002

The grievant has requested a ruling on whether her grievance initiated on October 2, 2001 with the Department of Social Services (DSS) qualifies for a hearing. The grievant claims that management misapplied or unfairly applied family sick leave policy and violated her rights of privacy. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

The grievant is employed at DSS as an Office Services Specialist. On September 13, 2001 the grievant submitted a leave slip to management requesting to use family sick leave on September 14, 2001. Management responded by asking the grievant to identify the ill family member and specify the number of leave hours being requested for leave. The grievant identified her daughter as the ill family member and indicated that she was requesting eight hours of leave. Management ultimately granted the grievant's request for leave subject to her providing documentation to verify her daughter's illness upon her return to work. The grievant eventually offered management a statement from her daughter's physician that listed her daughter's medical diagnosis.

DISCUSSION

By statute and under the grievance procedure, management reserves the exclusive right to manage the affairs and operations of state government.¹ Therefore, claims relating to issues such as the contents of established personnel policies, procedures, rules and regulations 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.² In this case, the grievant claims that management misapplied or unfairly applied policy by requiring her to identify which family member was ill prior to

¹ Va. Code § 2.2-3004(B).

² Va. Code § 2.2-3004(A) and (C); *Grievance Procedure Manual* § 4.1, pages 10-11.

granting her leave and by requesting that she provide documentation verifying her daughter's illness upon her return to work.

Misapplication or Unfair Application of Policy

For a claim of policy misapplication or unfair application of policy to qualify for a hearing, there must be evidence raising a sufficient question as to whether management violated a mandatory policy provision, or evidence that management's actions, in their totality, are so unfair as to amount to a disregard of the intent of the applicable policy. The controlling policy in this grievance is Department of Human Resource Management (DHRM) Policy No. 4.55. DHRM Policy 4.55 states that employees "shall be allowed to use their accrued sick leave to take time off from work for the illness or death of an immediate family member."³ This policy limits the number of hours an employee may use for sick family members to 48 hours within a year and includes an employee's children as immediate family.⁴ This policy also states that "an employee who wishes to use sick leave must comply with a management request for verification of the need to use sick leave." Verification includes, but is not limited to certification from a treating physician.⁵

In this case, management had the right to request that the grievant identify the ill family member and specify the number of hours being requested. DHRM policy clearly places limitations on which family members qualify as an immediate family and it restricts the number of hours an employee may use.⁶ Thus, management's inquiries were both reasonable and consistent with policy. Moreover, DHRM Policy 4.55 gave management the right to request documentation to verify the grievant's need for family sick leave upon her return to work. Therefore, management's request for verification was also consistent with policy. Accordingly, the evidence does not establish that a mandatory policy was misapplied.

The grievant further claims that management does not routinely request family sick leave verification from its employees and therefore, policy was unfairly applied to her when verification was requested. During the investigation of this ruling, management reported to this Department that verification is always requested from employees who request family sick leave under DHRM Policy 4.55. However, verification is not requested from employees who request family and personal leave under DHRM Policy 4.57, because that policy does not require management to monitor eligibility requirements or to verify an employee's need for leave.⁷ Unlike many employees, the

³ DHRM Policy 4.55 II (B) (effective 9/16/93).

⁴ *Id.*

⁵ DHRM Policy 4.55 III.

⁶ According to DHRM Policy 4.55 II (B), "an employee's immediate family shall be considered the employee's: [c]hildren, including stepchildren and foster children."

⁷ DHRM Policy 4.57-Virginia Sickness and Disability Program Leave. Leave granted under Policy 4.57 can be used for any purpose. (effective 1/1/99)

grievant's leave is controlled by DHRM Policy 4.55, which requires verification.⁸ Although the grievant disagrees with management's verification practices, she has provided insufficient evidence to establish that management has unfairly applied its policy or that its application of policy was so unfair as to amount to a disregard of the intent of the applicable policy.

Violation of Privacy

The grievant claims that management's request for verification violated her rights of privacy.⁹ Although the grievant has identified legitimate privacy concerns (e.g. her daughter's medical diagnosis appearing on the verification document), she has not established that management required personal information about her daughter's illness (such as a specific diagnosis) or that she was unable to remove such personal information from the document prior to its submission. Therefore, her claim that her privacy was violated ultimately challenges the contents of DHRM policy 4.55 which gives management the authority to verify an employee's need to use sick leave. The grievance statute clearly establishes that claims challenging the contents of state policy are not among the issues identified by the General Assembly as qualifying for a grievance hearing.¹⁰

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, she must 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

⁸ During the investigation of this ruling, management reported that the grievant elected to remain under DHRM Policy 4.55 when she made her mandatory leave policy selection in January 1999. Therefore, DHRM Policy 4.57 does not apply to the grievant.

⁹ The grievant cited on her Form A attachments that her rights were violated under the federal Privacy Act of 1974. The Act only protects against an invasion of privacy through the misuse of personal information offered by governmental agencies. The grievant does not make this claim in her grievance. Furthermore, the Act generally does not apply to state agencies. See Privacy Act of 1974, 5 USC, Sec. 552a. Moreover, her grievance would not make out a claim under Virginia's Government Data Collection and Dissemination Practices Act, Va. Code § 2.2-3800 et seq. (formerly entitled the Privacy and Protection Act of 1976.)

¹⁰ Va. Code § 2.2-3004(C); *Grievance Procedure Manual* § 4.1, pages 10 and 11.

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