

Issue: Qualification; Work Conditions; Ruling Date: June 19, 2002; Ruling #2002-012;
Agency: Department of Corrections; Outcome: not qualified



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Corrections/ No. 2002-012
June 19, 2002

The grievant has requested a ruling on whether his November 9, 2001 grievance with the Department of Corrections (DOC) qualifies for hearing. The grievant claims that the agency misapplied policy when it denied his November 9, 2001 request for travel reimbursement on the ground that he had not sought prior permission to use his personal vehicle. For the reasons discussed below, this grievance does not qualify for hearing.

FACTS

The grievant is employed by DOC as an Inmate Hearings Officer at one of the agency's correctional facilities. The grievant drove his personal vehicle to attend work-related training on November 1, 2001, and he requested reimbursement for the travel on November 9, 2001. The grievant's request was verbally denied the same day by the facility business manager because the grievant had not requested a motor pool vehicle or permission to use his personal vehicle prior to his travel, which is required for reimbursement under the facility's Internal Operating Procedure 105.¹

The grievance, asserts that "the CAPP [Commonwealth Accounting Policies and Procedures] Manual and DOC Procedure Manual state [that] employees electing to use their personal vehicle as a matter of convenience will be reimbursed for mileage at a lower rate," –in other words, the grievant reads the policy as providing that the employee *must be* reimbursed and the agency has no discretion to do otherwise. He thus asserts that requiring him to request a state vehicle or receive permission to use his personal vehicle violates state and agency policy.

DISCUSSION

By statute and under the grievance procedure, management is reserved the exclusive right to manage the affairs and operations of state government.² Although all complaints initiated in compliance with the grievance process may proceed through the

¹ See [Facility's] Institutional Operating Procedure (IOP) 105-4.0 (10/30/2001), stating "[i]f transportation is available from the [facility], employees must avail themselves of it or travel at their own expense unless special permission has been granted for personal vehicle use *prior* to travel." (Emphasis added).

² Va. Code § 2.2-3004 (B).

three resolution steps set forth in the grievance statute, thereby allowing employees to bring their concerns to management's attention, only certain issues qualify for a hearing. Claims relating to issues such as the methods, means and personnel by which work activities are carried out generally do not qualify for a hearing (including management's determination on travel reimbursement), 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.³ In this case, the grievant claims that policy has been misapplied.

For an allegation of misapplication 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. Further, if a claim of policy misapplication is qualified and proven at hearing, the relief that a hearing officer can grant is limited to directing the agency to reapply the policy from the point at which it was misapplied. A hearing officer may not award damages or attorney's fees or any other prospective relief.⁴

In this case, the applicable policy is the State Travel Regulation that controls use of a personally owned vehicle.⁵ The introduction to the Travel Regulations clearly states that "Executive Branch agencies are authorized to adopt more restrictive policies and procedures as approved by the Agency Head."⁶ Further, with regard to the use of a personally owned vehicle, the policy states that "[a]gencies must conduct a cost/benefit analysis to determine whether a State owned or a personally-owned vehicle is best used in official State travel."⁷

In this case, the grievant's facility is part of a complex of correctional institutions that has determined that it is cost effective to provide a fleet of state vehicles, based on the amount of official travel by employees in the complex. To realize the cost efficiencies of the pool of vehicles, the institutions within the complex implemented IOP 105, which requires an employee to use a state-owned vehicle whenever available, or not be reimbursed. In addition, in his response at the qualification step, the agency head affirmed his approval of IOP 105 to the grievant. Thus, the facility policy itself, and its implementation in this case, are both consistent with DOC and state travel reimbursement policy. Accordingly, the evidence presented does not raise a sufficient question as to whether a misapplication of policy has occurred, and this issue does not qualify for a hearing.

³ Va. Code §2.2-3004 (A) and (C); *Grievance Procedure Manual* § 4.1 (c) page 11.

⁴ *Grievance Procedural Manual* § 5.9, pages 15-16; *Rules for Conducting Grievance Hearings*, page 10.

⁵ See *State Travel Regulations*, General Accounting Topic No. 20335, pp. 23-24. The DOC policy closely follows the content of the state travel regulation.

⁶ See *State Travel Regulations*, General Accounting Topic No. 20335, p. 3.

⁷ *Id.* at page 23.

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, the grievant 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 he does not wish to proceed.

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