

Issue: Qualification; Methods/Means; promotion policy; Ruling Date: July 17, 2002;
Ruling #2002-021; Agency: Department of State Police; Outcome: not qualified.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of State Police
Ruling Number 2002-021
July 16, 2002

The grievant has requested a ruling on whether his grievance initiated with the Department of State Police on November 30, 2001 qualifies for a hearing. The grievant claims that management misapplied or unfairly applied the promotion policy. For the reasons discussed below, this grievance does not qualify for hearing.

FACTS

The grievant is employed by the agency as a Senior Trooper. In April 2000, the grievant applied to be placed on the promotional list for the rank of Sergeant (effective from January 1, 2001 through December 31, 2002). As part of the application process, the grievant also filled out a Location and Assignment Sheet¹ indicating the geographic areas around the state where he would be willing to accept a promotion. The grievant listed the area where he was then currently working, as well as several others. By July 2001, the grievant was next in eligibility and was offered a choice from among five Sergeant positions (all in his selected areas). All five positions would require the grievant to relocate. However, by that time, the grievant had reconsidered his earlier willingness to move in order to take a promotion, and he declined all five offers. As this was the grievant's first refusal, he remained eligible for the next available promotion to a position in one of his listed areas, and other Troopers were offered and accepted the positions he had declined.

By August 2001, one of the Troopers who had accepted a position declined by the grievant requested to be transferred out of the position. The Trooper accepted a demotion and was moved to another area of the state. His transfer request was treated as one decline, and he was returned to the promotional eligibility list. Faced with a vacancy in that position, the hiring authority returned to the promotional list and found that the grievant was the next eligible candidate. Consequently, on October 1, 2001, the hiring authority called the grievant and offered him the Sergeant position. Although the grievant reminded the hiring authority that he had declined the position only a few months earlier in July, the hiring authority stated that—regardless of that fact—declining

¹ See Agency's General Order 73 – 5, Paragraph 8(a)(1).

the position would count as a second refusal. The grievant declined the position and was removed from the eligibility list for the remainder of the promotional cycle (ending on December 31, 2002).

DISCUSSION

The grievance procedure recognizes management's exclusive right to manage the operations of state government, including the hiring or promotion of employees within an agency.² Inherent in this right is the authority to determine whether or when vacant positions will be filled. Grievances relating solely to the contents of personnel policies and the hiring of employees within an agency "shall not proceed to a hearing."³ Accordingly, a grievance challenging the promotional process does not qualify for a hearing unless there is evidence raising a sufficient question as to whether the process was tainted by discrimination, retaliation, discipline, or a misapplication of policy.⁴ In this case, the grievant asserts that management misapplied or unfairly applied agency policy by removing him from the eligibility list for promotion because he declined the same position twice.

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. The agency's General Order 73 is the policy that applies to the grievant's claim. Under General Order 73, candidates are only offered promotions to areas of their own choosing, which they indicate on a Location and Assignment Sheet filled out after they receive the results of their promotional exam (thereby allowing them more information about the likelihood of their promotion before they decide the areas for which they will volunteer).⁵ Generally, once a candidate lists his areas, he may not change them.⁶ "Candidates who decline a promotion twice will be removed from all eligibility lists. They must wait until the next [promotional] cycle to participate in the promotional process."⁷ In light of these provisions of the General Order, the grievant's claim that the agency unfairly applied or misapplied policy by removing him from the promotional list after twice declining an area he had volunteered for on his Location and Assignment Sheet does not qualify for hearing, because the agency acted within the policy by doing so.

The grievant also asserts that the agency acted inconsistently by returning the Trooper who transferred out of the relevant Sergeant position to the eligibility list, but not

² See Va. Code § 2.2-3004 (B).

³ Va. Code § 2.2-3004 (C).

⁴ *Grievance Procedure Manual*, § 4.1 (c), page 11.

⁵ See Agency's General Order 73 – 5, Paragraph 8(a)(1).

⁶ An exception to the general rule exists when a new division or unit is created or when a new promotional opportunity (position) is created within an established division or unit. Also, a candidate may change his form during the second year of the promotional cycle between January 1, and January 15. Neither condition was present in this case.

⁷ See Agency's General Order 73 – 6, Paragraph 8(d).

the grievant. The agency has distinguished its decision to leave the other Trooper on the list, while removing the grievant, on the basis that the other Trooper initially accepted promotion to the position and later refused it, counting as one decline. The grievant, by contrast, initially declined the position and then declined it again after the transferred Trooper vacated it, which the agency found to constitute two refusals. Although the grievant may disagree with this decision, there is insufficient evidence that it was so unfair as to amount to the intent of the policy. Thus this grievance does not qualify for a hearing.

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 he does not wish to proceed.

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