

Issue: Qualification; Methods/Means-Transfer; Ruling Date: June 17, 2002; Ruling #2002-042; 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/ No. 2002-042
June 17, 2002

The grievant has requested a ruling on whether his January 2, 2002 grievance with the Virginia State Police (VSP) qualifies for a hearing. The grievant claims that his transfer from one county to another was disciplinary in nature, and the result of an earlier disciplinary action.¹ For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

The grievant is employed as a State Trooper with VSP. On July 17, 2001, the grievant, while on shift, observed three vehicles in a field and attempted to drive his car into the field, where he became stuck in the mud. He determined that one of the drivers was intoxicated and charged him with driving under the influence and with trespassing. According to VSP, the grievant told the others that if they helped him remove his police cruiser from the mud, he would not charge them with trespassing. When they were unsuccessful in removing the car, he required them to pay the \$125 fee for the tow truck. Those two individuals were not charged with trespass. The grievant denies that there was any "deal" made, and states that he required them to pay the tow truck operator as a form of punishment. As a result of this incident, VSP issued a Group III Written Notice to the grievant on November 1, 2001 and suspended him for two days.

When the individual charged with drunk driving and trespass went to court, his attorney approached the Commonwealth's Attorney (C.A.) for the county and told him about the alleged deal between the grievant and the other drivers. The C.A. later expressed concern that the grievant had "committed a violation of the law" which "affects his credibility on the stand."² As a result, the C.A. stated that he would no longer prosecute any cases in the county brought by the grievant. The agency determined that because the C.A. would no longer prosecute the grievant's cases, the grievant was no longer effective in that county as a State Trooper. As a result, management transferred the grievant to another county.

¹ A grievance hearing on the earlier disciplinary action was held on February 18, 2002. Due to the timing of the disciplinary action, the transfer, and the grievances, consolidation of the issues was not possible.

² See Memorandum dated December 6, 2001 to the Division Commander.

The grievant claims that the transfer is a financial hardship on his family, and that it cannot be separated from his November 2001 discipline. Moreover, he disputes a decrease in his salary due to a geographic differential that applied to his original post. VSP maintains that the transfer was not disciplinary, but was ordered only to ensure operational effectiveness, since the C.A. would no longer prosecute the grievant's cases. It notes that the only discipline given to the grievant was the Group III written notice with suspension, and that the transfer was not part of the discipline.³

DISCUSSION

The employment dispute resolution statutes reserve to management the exclusive right to manage the affairs and operations of state government.⁴ Thus, management has the statutory right to transfer and assign employees to provide for the most efficient and effective operation of the facility.⁵ The transfer or reassignment of an employee generally does not qualify for a hearing unless there is evidence raising a sufficient question as to whether it resulted from a misapplication of policy, discrimination, retaliation, or discipline. In this case, the grievant asserts that management's decision to transfer him to another county was disciplinary, and thus a misapplication of policy, since it was triggered by his November 2001 Written Notice.

Disciplinary Transfer

For state employees, a transfer must be either voluntary, or, if involuntary, must be based on objective methods and must adhere to all applicable statutes and to the policies and procedures promulgated by the Department of Human Resource Management (DHRM).⁶ Applicable statutes and policies recognize management's authority to transfer an employee for disciplinary purposes as well as to meet the agency's legitimate operational needs.⁷

When an employee is transferred as a disciplinary measure, certain policy provisions must be followed.⁸ All transfers accompanied by a written notice automatically qualify for a hearing if challenged through the grievance procedure.⁹ In the absence of an accompanying written notice, a challenged transfer qualifies for a hearing only if there is a sufficient question as to whether the transfer was an "adverse employment action" and was intended to correct behavior or to establish the professional

³ Management reported that it did not transfer the grievant before receiving the C.A.'s memorandum because his "effectiveness in [the county] had not been compromised at that time." See Second Step Response.

⁴ Va. Code § 2.2-3004 (B).

⁵ Va. Code § 2.2-3004 (C).

⁶ Va. Code § 2.2-2900 *et seq.*

⁷ Va. Code §§ 2.2-3004 (A) and (C); DHRM Policy No. 1.60, Standards of Conduct (VII)(E).

⁸ DHRM Policy No. 1.60, Standards of Conduct (VII).

⁹ Va. Code § 2.2-3004 (A); DHRM Policy No. 1.60, Standards of Conduct (IX); *Grievance Procedure Manual* § 4.1, page 10.

or personal standards for the conduct of an employee.¹⁰ These policy and procedural safeguards are designed to ensure that a disciplinary transfer is merited. A hearing cannot be avoided for the sole reason that a written notice did not accompany the transfer.

Assuming that the grievant's transfer constitutes an adverse employment action, the only issue remaining is whether there is sufficient evidence that VSP transferred the grievant in order to correct or punish his behavior, or to establish professional or personal standards. Management asserts that its decision to transfer the grievant was not disciplinary, but was necessitated for the operational effectiveness of the agency. Indeed, there is compelling logic to the assertion that his effectiveness as a Trooper in the county would be seriously impaired, give the undisputed fact that the Commonwealth's Attorney has objected to using the grievant as a witness in court cases. If the transfer was caused by the C.A.'s refusal to prosecute cases brought by the grievant, it was not a disciplinary transfer -- regardless of the merits of his charges against the grievant's credibility.

Certainly, the grievant's transfer is indirectly related to his Written Notice, but there is insufficient evidence that the transfer was the *result* of the Written Notice or the alleged offense upon which the Written Notice was based. The transfer and formal discipline are related only because both the disciplinary action and the Commonwealth's Attorney's loss of confidence in the grievant arose from the events of July 2001. Significantly, however, the transfer followed the C.A.'s decision, not the mere issuance of the Written Notice. Indeed, even if a hearing officer chooses to rescind or reduce the Group III notice, that would not change the fact that the C.A. has lost confidence in the grievant and would not prosecute his cases. In sum, there is insufficient evidence that the grievant was transferred for any reason other than the C.A.'s refusal to prosecute his cases.

Salary

Claims relating to issues such as the establishment or revision of wages, salaries, or general benefits generally do not qualify for a 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. As stated above, there is no evidence that the grievant's transfer was the result of discipline, and the grievant does not claim discrimination or retaliation.

Furthermore, there are no facts to support a claim that management misapplied or unfairly applied policy in determining the grievant's salary upon transfer. The grievant had worked in northern Virginia, where he received the standard northern Virginia salary

¹⁰ Va. Code § 2.2-3004 (A) and (C); *Grievance Procedure Manual* § 4.1 (b)(5) and (c)(4), pages 10-11 (a claim of disciplinary transfer, assignment, demotion, suspension, or other action similarly affecting the employment status of an employee may qualify for a hearing if there are sufficient supporting facts).

differential. Because his transfer takes him outside of northern Virginia, the agency properly applied state compensation policy by removing¹¹ the differential.

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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¹¹ DHRM Policy No. 3.05 Compensation, p. 18 of 21 (effective 9/25/00; revised 3/1/01).