

Issue: Qualification-Multiple Compensation/Leave; Ruling Date: June 21, 2002; Ruling #2002-084; Agency: Department of State Police; Outcome: qualified.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of State Police
Ruling Number 2002-084
June 21, 2002

The grievant has requested a ruling on whether his March 18, 2002, grievance with the Virginia Department of State Police (VSP) qualifies for a hearing. The grievant claims that management misapplied the agency's compensatory leave policy resulting in his loss of three hours of compensatory leave. For the reasons discussed below, this grievance qualifies for a hearing

FACTS

The grievant is employed as a Master Trooper at the Department of State Police. On February 25, 2002, the grievant submitted a leave/activity report form (SP-106) for the week ending February 23, 2002, indicating that he had taken three hours of approved compensatory leave on February 20-21, 2002 from his accrued leave balance. He indicates that it was his intent to use up accrued compensatory leave that he had earned on February 22, 2001, prior to losing it on February 22, 2002, as provided by policy.¹ On the same SP-106, the grievant also showed eight hours of compensatory leave earned on February 18, 2002 that he intended to accrue. The leave/activity report form was approved by the grievant's supervisor and submitted for administrative processing.

However, during the administrative processing of the leave/activity report form, the grievant's work schedule was adjusted for the period to reflect that the three hours of compensatory leave taken on February 20-21, 2002 had been earned on February 18, 2002 rather than from leave previously accrued on February 22, 2001. As a result of this adjustment, the grievance appears to indicate that the three hours of compensatory leave earned on February 22, 2001 lapsed less than one year after it was earned.

¹ Under both DHRM Policy No. 3.10 (IV) (B) and VSP General Order 41.3 (c), accrued compensatory leave lapses 12 months after the date earned.

DISCUSSION

For an allegation of misapplication of policy or unfair application 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 grievant contends that agency compensatory leave policy was misapplied resulting in his loss of three hours of earned leave.

The agency claims that the adjustment was in compliance with VSP General Order 41.5(b).² However, that policy reflects that a schedule adjustment is only applicable for compensatory leave that is “repaid during the week or work period *in which it was earned.*” While it is true that the grievant earned and used leave during the same pay period, the leave he attempted to use was *not* the leave that was earned. Rather, the leave he attempted to *use* during the pay period ending February 23, 2002 had accrued nearly a year prior to the leave he *earned* during the pay period ending February 23, 2002. Furthermore, the grievant had supervisory approval to take compensatory leave on February 20-21, 2002, using leave accrued from February 22, 2001, which was within the 12 month required period.³ Also, in completing the leave and activity report form, the grievant indicated that he had used previously accrued compensatory leave and wanted to accrue the most recent leave earned on February 18, 2002.

In sum, it appears that a reasonable fact finder could possibly (but not necessarily) conclude that the evidence suggests the grievant’s understandable desire to use leave legitimately earned months before, leave that would soon expire, rather than an attempt by the grievant to manipulate the leave policy. Thus, for the reasons discussed above, and in light of the provisions of state and agency compensatory leave policies, this grievance raises a sufficient question as to whether the agency has misapplied or unfairly applied policy.

² “Compensatory leave to be accrued shall be shown on the Form SP-106. Compensatory leave repaid during the week or work period in which it was earned is treated as an adjusted schedule and only requires the supervisor’s approval.” The agency further objects to the grievant’s attempt to use his three hours of accrued leave based on the language of the State Police Compensatory Leave Policy which states: “Employee earning and taking comp leave within the same week will no longer record this as two separate transactions on the SP-106. Only the NET RESULT, if any, will be recorded.” (Emphasis supplied). The agency further notes that the policy states that “Employees will not be allowed to extend the life of comp. leave by manipulating the SP-106.”

³ The agency objects to the grievant’s attempt to use his three hours of accrued leave based on the language of the State Police Compensatory Leave Policy which states that: “Employee earning and taking comp leave within the same week will no longer record this as two separate transactions on the SP-106. Only the NET RESULT, if any, will be recorded.” The agency notes that policy states: “Employees will not be allowed to extend the life of comp. leave by manipulating the SP-106.”

ADDITIONAL INFORMATION

For information regarding the actions the grievant may take as a result of this ruling, please refer to the enclosed sheet. Please also note that our qualification ruling is not a determination that the agency misapplied or unfairly applied policy. Rather, this ruling simply reflects that there is a sufficient question as to whether the agency misapplied or unfairly applied policy, and that further review by a hearing officer is justified. If a hearing officer determines that DOC has misapplied or unfairly applied policy, he may only order that the agency reapply the policy as mandated or in a manner in keeping with the intent of the applicable policy.

Claudia T. Farr
Director

June M. Foy
Senior Employment Relations Consultant