

Issue: Qualification-Compensation/Leave-Travel; Ruling Date: August 5, 2002; Ruling #2002-091; Agency: Department of Forestry; Outcome: not qualified



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Forestry
Ruling Number 2002-091
August 5, 2002

The grievant has requested a ruling on whether his December 21, 2001 grievance with the Department of Forestry (DOF) qualifies for a hearing. The grievant claims that management misapplied policy by denying his request for reimbursement of travel expenses and by failing to communicate State and departmental travel policies to employees.

FACTS

The grievant is employed as an Area Forester. In that role, he is required to travel extensively and work routinely in excess of 40 hours per week. Among his most important functions is fire prevention and suppression, often performed beyond normal work hours and under emergency conditions.

On October 23, 2001, the grievant worked a total of 11 hours, ending at 12 midnight while participating in fire suppression operations. The grievant lodged on the fire line and did not use a hotel facility. On November 13, 2001, the grievant worked a total of 15 hours, ending at 12 midnight, while participating in fire suppression operations. On this occasion, the grievant also lodged on the fire line and did not use a hotel facility.

On November 2 and 29, 2002, the grievant submitted claims for per diem meal and incidental travel expenses (M&IE per diem), which were initially approved by his supervisor.¹ Subsequently, the grievant's supervisor notified him that the previously granted approval had been in error, and that he was not entitled to a per diem because he had not lodged overnight in a motel on the claimed travel dates.

DISCUSSION

Misapplication of Policy

¹ The grievant claimed entitlement to reimbursement of \$22.50 for each of the two travel dates.

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 claims that neither State nor departmental policy requires overnight stay in a hotel in order for an employee to qualify for an M&IE per diem. Further, he asserts that management had granted approval for M&IE per diem in at least six other similar instances.

The applicable policy in this case is Topic 20335, the State Travel Regulations. Under Topic 20335, meals and certain incidental travel expenses generally are reimbursable in established, fixed amounts for overnight business travel outside of the traveler's official station.² On travel days, 75% of the established per diem is allowed.³ Topic 20335 also contains a provision regarding fixed meal allowances for occasions when an employee is working or traveling in overtime status. DOF has been granted an exception to this provision under which overtime meal reimbursement is allowed only for actual meal expenditures up to the applicable fixed meal allowance established in Topic 20335.⁴

The Department of Accounts (DOA), the agency charged with the responsibility of promulgating policy for the uniform accounting and control of state funds, has issued a policy interpretation regarding this case. DOA's interpretation concludes that the grievant does not qualify for M&IE per diem on the dates claimed. Under the DOA interpretation, only overtime meal expense reimbursement was authorized in accordance with the DOF Overtime Meal Policy. Because the agency charged with promulgation of travel policy has reviewed the facts of this case and found no misapplication of that policy, this Department is compelled to deny qualification on this issue.

Regarding the grievant's assertion that meal reimbursement was granted in six other cited cases, thereby resulting in an inconsistent application of policy, agency management reports that these cases are under review and will be treated similarly in view of the DOA policy interpretation.

Communicating Travel Policy to Employees

Under State Travel Regulations, agencies are assigned responsibility for "communicating State travel policies, regulations and procedures to all employees who travel on State business." The manner in which this responsibility is met is left to the individual agency's discretion. In this instance, DOF has a written travel policy dated September 1, 2000, which is available for review by agency employees. The DOF policy is based upon the State Travel Regulations. In addition, the DOF policy is included in a

² Topic 20335, page 13.

³ *Id.* at page 17.

⁴ See 12/11/97 Memo from DOF Fiscal Director to DOA Disbursement Manager.

departmental procedures manual, a copy of which the agency asserts is distributed to each employee. The grievant has provided no evidence to show that the agency failed to meet any mandated responsibilities in communicating the travel policy. Therefore, this issue does not qualify for 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, the grievant 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 wishes to conclude the grievance and notifies the agency of that desire.

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