

Summary: Qualification-Methods/Means-Hours of Work-Shifts; Ruling Date: June 5, 2002; Ruling #2002-097; Agency: Department of Mental Health, Mental Retardation and Substance Abuse Services; Outcome: Not qualified.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Mental Health, Mental Retardation, and Substance Abuse Services
Ruling Number 2002-097
June 5, 2002

The grievant has requested a ruling on whether her March 4, 2002, grievance with the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) qualifies for a hearing. The grievant claims that management discriminated against her and misapplied or unfairly applied policy by discontinuing her alternate work schedule. For the reasons set below, this grievance does not qualify for hearing.

FACTS

The grievant is employed as a Direct Service Associate. In August 2001, the facility implemented an alternate work schedule for Direct Service Associates (DSA) assigned to the patient living units. Under the alternate schedule, the grievant's and other DSAs' workweek was comprised of two workdays of 13.5 hours and one day of 13 hours. On February 11, 2002, the facility director, citing problems with the alternate format, terminated the alternate work schedule and directed a return to a five workday, eight hour per day work schedule.

DISCUSSION

By statute and under the grievance procedure, management reserves the exclusive right to manage the affairs and operations of state government.¹ Therefore, claims relating to issues such as methods, means and personnel by which work activities are carried on and the contents of established personnel policies, procedures, rules and regulations generally do not qualify for 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

¹ Va. Code §2.2-3004 (B).

been misapplied.² The grievant's claims of discrimination and misapplication or unfair application of policy are discussed below.

Discrimination

Under the grievance procedure, a claim of discrimination arising from membership in a protected class (in other words, on the basis of race, color, religion, political affiliation, age, disability, natural origin, or sex) may qualify for a hearing.³ The grievant's complaint of discrimination, however, is not based on membership in a protected class, but rather on a claim of unfair treatment, based on her assertion that only the DSAs assigned to the patient living units were required to return to a five days a week, 8 hours per day schedule. Because the grievant does not assert that the agency's actions are based on her membership in a protected class, this issue does not qualify for a hearing.

Misapplication/Unfair application of policy

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 the decision to discontinue the alternate schedule for DSAs assigned to the patient living units constituted an unfair application of policy. Under state policy, DMHMRSAS has been granted complete discretion to establish schedules for employees according to its perceived needs.⁴ Inherent in this authority is the discretion to establish employee work schedules for the most effective and efficient operation of the facility. In this case, while the grievant may have been disadvantaged by management's exercise of discretion in discontinuing the alternate work schedule, she has not provided evidence to show that any policy was misapplied or applied unfairly. Accordingly, this issue does not qualify for a hearing.

CONCLUSION

For the reasons discussed above, this grievance does not qualify for a hearing. 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 her Human Resources Office, in writing, within five workdays of receipt of this ruling. If the court should qualify the grievance,

² Va. Code § 2.2-3004 (A) and (C). Grievance Procedure Manual, pp. 10-11.

³ *Grievance Procedure Manual*, § 4.1(b), page 10.

⁴ DHRM Policy No. 1.25 III (A).

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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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