

Issue: Qualification-Methods/Means-Transfer (not under S.O.C. or Perf. Policy) Ruling Date: July 24, 2002; Ruling #2002-108; Agency: Department of Corrections; Outcome: not qualified



*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*

**QUALIFICATION RULING OF DIRECTOR**

In the matter of Department of Department of Corrections  
Ruling Number 2002-108  
July 24, 2002

The grievant has requested a ruling on whether her March 8, 2002 grievance with the Department of Corrections (DOC) qualifies for a hearing. The grievant claims that her transfer from one correctional center to another was disciplinary in nature and/or constituted a misapplication of DOC policy.

FACTS

The grievant is employed as a Corrections Officer. In early 2002, the warden at her facility heard rumors from members of the staff that the grievant and the chief of security were seeing each other socially. The grievant and the chief of security were called to a meeting by the warden to discuss their personal relationship, and admitted that they were romantically involved. As a result of their admission, the warden announced that one of them must move to another facility because the chief of security was in the grievant's direct supervisory chain. The warden presented several reassignment options and the grievant allegedly agreed verbally to a transfer to the facility to which she is currently assigned. The grievant now claims that the transfer was involuntary and intended to discipline her for a relationship with a superior officer, which was perceived by management as improper. Additionally, she asserts that the transfer constituted a misapplication of DOC policy.

DISCUSSION

The employment dispute resolution statutes reserve to management the exclusive right to manage the affairs and operations of state government.<sup>1</sup> Thus, management has the statutory right to transfer and assign employees to provide for the most efficient and effective operation of the facility.<sup>2</sup> 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 essentially that management's decision to transfer her to another facility was disciplinary and/or constituted a misapplication of DOC policy. These issues are discussed below.

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<sup>1</sup> Va. Code § 2.2-3004 (B).

<sup>2</sup> Va. Code § 2.2-3004 (C).

### *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).<sup>3</sup> 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.<sup>4</sup>

When an employee is transferred as a disciplinary measure, certain policy provisions must be followed.<sup>5</sup> All transfers accompanied by a written notice automatically qualify for a hearing if challenged through the grievance procedure.<sup>6</sup> 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 or personal standards for the conduct of an employee.<sup>7</sup> 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 does not accompany the transfer.

In this case, the employee has not established that the transfer constituted an "adverse employment action." An "[a]dverse employment action includes any retaliatory act or harassment if, but only if, that act or harassment results in an adverse effect on the "terms, conditions, or benefits" of employment."<sup>8</sup> This would encompass any tangible employment action by management that has some significant detrimental effect on factors such as an employee's hiring, firing, compensation, job title, level of responsibility, or opportunity for promotion.<sup>9</sup>

The grievant has not presented any evidence that her transfer to a position as Corrections Officer at a different facility was a substantive change in her duties, responsibilities, or opportunities for promotion. Likewise, there is no evidence that her compensation or other terms, conditions, or benefits of her employment were thereby adversely affected. In sum, absent any decrease in compensation, job title, level of responsibility, or opportunity for promotion, transfer to a position at a new facility commensurate with one's salary level does not constitute an adverse employment action. Therefore, this issue does not qualify for hearing.

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<sup>3</sup> Va. Code § 2.2-2900 *et seq.*

<sup>4</sup> Va. Code §§ 2.2-3004 (A) and (C); DHRM Policy No. 1.60, Standards of Conduct (VII)(E).

<sup>5</sup> DHRM Policy No. 1.60, Standards of Conduct (VII).

<sup>6</sup> Va. Code § 2.2-3004 (A); DHRM Policy No. 1.60, Standards of Conduct (IX); Grievance Procedure Manual § 4.1(a), page 10.

<sup>7</sup> 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).

<sup>8</sup> *See Von Gunten v. Maryland Dept. of the Environment*, 243 F. 3d 858 (4<sup>th</sup> Cir. 2001).

<sup>9</sup> *See Boone v. Golden*, 178 F. 3d.253 (4<sup>th</sup> Cir. 1999).

*Misapplication of DOC Policy*

Under DOC policy, an employee may not be in a direct supervisory or administrative relationship to their spouse or any other relative residing in the same household.<sup>10</sup> The grievant asserts that because she and the chief of security are not married, no conflict of interest existed under policy, and that therefore, her transfer constituted a misapplication of policy.

In this case, the agency contends that it did not take its actions under the provisions of the cited policy, because it is not applicable. Rather, the agency's position is that it transferred the grievant in accordance with its general authority to manage its operations, and did so for business related reasons: essentially, because the chief of security was in the grievant's direct line of supervision,<sup>11</sup> and their relationship created an unhealthy work environment with the potential to induce conflict and undermine the morale of the other employees. Management asserts that the grievant's transfer was therefore necessary to maintain the most efficient and effective operations of the facility. Further, although a positive management gesture, it was not necessary under these circumstances to gain the grievant's approval or agreement to the transfer. Accordingly, 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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Claudia T. Farr  
Director

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<sup>10</sup> See DOC Policy 5-4.9, Standards of Ethics and Conflict of Interest.

<sup>11</sup> Although there was no direct supervisory relationship, the chief of security has operational supervision of all correction officers, and could thereby influence the conditions of the grievant's employment.