

Issue: Qualification-Work conditions/Supervisory Conflict; Ruling Date: August 16, 2002;
Ruling #2002-122; 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 Numbers 2002-122
August 16, 2002

The grievant has requested a ruling on whether his April 10, 2002, grievance with the Department of Corrections qualifies for a hearing. The grievant claims that the unit Superintendent treated him in a humiliating and abusive manner. As relief, the grievant wants DOC to discipline the Superintendent and transfer her to another facility.¹ For the reasons discussed below, this grievance does not qualify for hearing.

FACTS

The grievant is employed as a Corrections Officer. When initially assigned to his current facility, the grievant was issued a summer uniform, minus a summer cap. In order to complete his summer uniform for wear, the grievant obtained a summer cap from another correctional organization, bearing its designation. On April 10, 2002, he wore the mismatched uniform to work. During the morning inspection, the Superintendent noted the grievant's unauthorized cap.

The grievant claims that the Superintendent attempted to personally remove the cap from his head and that he only evaded her effort by moving backwards and putting his hands up. Further, he claims that she spoke to him in a loud and discourteous tone throughout the episode. The grievant claims that by her actions, the Superintendent physically violated his personal space, and humiliated and abused him in front of his co-workers.

DISCUSSION

By statute and under the grievance procedure, management is reserved the exclusive right to manage the affairs and operations of state government.² Inherent in management's authority is the responsibility and discretion to discipline employees for unacceptable behavior and to determine the appropriate level of such disciplinary action. The grievant

¹ The grievant did not clearly state the relief requested on the Form A. However, during the investigation of this matter, he clarified that the relief desired was that the Superintendent be disciplined and transferred to another correctional facility.

² Va. Code § 2.2-3004 (B)

asserts that management should have disciplined the Superintendent for actions that he personally deemed humiliating and abusive.

The record reflects management carefully reviewed the grievant's allegation before and during the grievance process. Although all complaints initiated in compliance with the grievance process may proceed through the three resolution steps set forth in the grievance statute, thereby allowing employees to bring their concern to management's attention, only certain issues qualify for a hearing.³

Claims relating to issues such as the methods, means and personnel by which work activities are carried on (including management's determination whether to counsel or discipline another employee and to what extent) 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 has been misapplied. In this case, the grievant has not offered evidence that would raise a sufficient question about any of the above mentioned concerns.⁴

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.

Finally, in the relief requested, the grievant asked that the Superintendent be disciplined and transferred to another correctional facility. Even if the grievance were qualified by the circuit court, the scope of relief that a hearing officer may grant is limited, and does not include ordering the agency to take adverse action against another employee, including discipline, demotion, suspension, or termination.

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Director

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³ Va. Code § 2.2-3004 (A)

⁴ Although DHRM's Workplace Violence Policy No. 1.80 could conceivably have some relevance to claims of humiliation, abuse, and "violation of personal space," that policy did not take effect until May 1, 2002, after the incident at issue here and the filing of this grievance.