

Issue: Qualification/Benefits/VRS/Compliance/30-day rule; Ruling Date: January 13, 2003; Ruling #2002-144; Agency: Department of Corrections; Outcome: grievance timely, but issues not qualified for hearing. Appealed in the Circuit Court of Greenville County; Filed on January 9, 2003; EDR Ruling Affirmed: Entered on February 3, 2003.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE AND QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Corrections

Ruling Number 2002-144

January 13, 2003

The grievant has requested compliance and qualification rulings regarding his April 25, 2002 grievance with the Department of Corrections. The agency head replied that the grievant did not initiate his grievance in a timely manner (within the 30-calendar day time period) as required by the grievance procedure. For the reasons set forth below, the grievance is ruled to be timely; however, it does not qualify for hearing.

FACTS

The 1999 General Assembly passed the Virginia Law Officers' Retirement System (VALORS), which became effective on October 1, 1999. VALORS allows those employees covered by the law to retire with unreduced benefits at age 50 with 25 years of service (as compared with regular service retirement which provides unreduced benefits at age 65 with 30 years of service). Additionally, those employees with 20 years of service in a covered hazardous duty position are eligible to receive a supplement to their retirement until age 65.¹ Correctional officers as the term is defined in Va. Code § 53.1-1 were included among the categories of eligible employees.²

The grievant is employed as a Corrections Chief Warden. Between March 24 and April 1, 2002, the grievant began the retirement process under the provisions of the Virginia Law Officers' Retirement System (VALORS). During the processing of his retirement application, it was determined that his position was not among those included in VALORS. On April 25, 2002, the grievant initiated a grievance alleging that the agency's decision to exclude his position from VALORS was arbitrary and capricious. The grievance was unresolved during respondent steps and proceeded to qualification. During the qualification review, the agency head asserted that the grievance was not timely.

DISCUSSION

Compliance with the 30-day rule

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date he knew or should have known of the event

¹ Va. Code § 51.1-211.

² Va. Code § 51.1-212.

or action that is the basis of the grievance.³ When an employee initiates a grievance beyond the 30-calendar day period without just cause, the grievance is not in compliance with the grievance procedure, and may be administratively closed.

In the present case, it appears that the grievant was aware, more than 30 days prior to the initiation of his grievance, of the positions that DOC considered to be covered and not covered under VALORS. On July 15, 1999, DOC had distributed a memorandum to management officials outlining the provisions of VALORS and identifying the specific positions it determined were covered.⁴ The grievant was among the officials so notified. However, at that time, the grievant was not “directly and personally” impacted by the memorandum because the grievant was not ready to retire in 1999.⁵ Moreover, within 30 calendar days of the date that the grievant applied for and was denied VALORS retirement benefits (and thus was “directly and personally” impacted by the exclusion from VALORS), he initiated a grievance challenging the agency’s failure to designate him, as Chief Warden, as eligible for VALORS. Thus, when he initiated his grievance on April 25, 2002, the issue of his exclusion from the VALORS program related directly and personally to the grievant and was also timely.

Qualification

The sole basis for the agency’s refusal to qualify the grievance was the grievant’s alleged failure to abide by the 30-day grievance initiation rule. As discussed, the agency’s reliance on untimeliness was misplaced. However, as discussed below, the grievance does not qualify for hearing because the grievant has not presented sufficient evidence that the agency misapplied state policy by excluding him, as Chief Warden, from the VALORS program.

The grievant contends that he is a “correctional officer” as defined by Va. Code § 53.1-1. Section 53.1-1-states that a “correctional officer” is a “duly sworn employee of the Department of Corrections whose normal duties relate to maintaining immediate control, supervision and custody of prisoners confined in any state correctional facility.” Based on a plain reading of this statute, Chief Wardens do not meet the definition of “correctional officer” because their “*normal duties*” do not entail the “*immediate control, supervision and custody of prisoners.*” The “role” title for the grievant’s position, Security Manager IV, itself recognizes that the normal duties associated with this classification are administrative, supervisory, and *managerial*. According to the role classification, a Security Manager IV “[d]irects programs through subordinate managers.” The role classification for Security Manager IV contemplates that a Corrections Chief Warden’s duties primarily include the “manage[ment] and direct[ion]

³ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4(1), page 6.

⁴ The memorandum was distributed to Deputy and Assistant Directors, Regional Directors, Regional Administrators, Chiefs of Operations, and Organizational Unit Heads.

⁵ Under the grievance procedure an employee’s grievance “must . . . pertain directly and personally to the employee’s own employment in a position with access to the grievance procedure.” *Grievance Procedure Manual* § 2.4(1), page 6.

of the activities of the most complex prisons,” not the “*immediate* control, supervision, and custody of prisoners.” For that reason, we cannot conclude that the VALORS retirement plan has been misapplied as to the grievant.

For the reasons discussed above, this Department has determined that the grievance does not qualify for 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 the qualification 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.

Claudia T. Farr
Director

June M. Foy
Dispute Resolution Consultant Sr.