

Issue: Qualification/Benefits/VRS; Ruling Date: December 31, 2002; Ruling #2002-145; Agency: Department of Corrections; Outcome: not qualified. 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

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Corrections
Ruling Number 2002-145
December 31, 2002

The grievant has requested a ruling on whether his April 24, 2002 grievance with the Department of Corrections (DOC) qualifies for a hearing. The grievant claims that the agency has failed to comply with state and federal law by refusing to provide his full creditable compensation to the Virginia Retirement System (VRS) for the purpose of computing his retirement pay.

FACTS

Employees who accumulate at least five years of creditable service are eligible to receive retirement benefits from the Virginia Retirement System (VRS). The amount of the retirement benefit is based upon the employee's (1) average final compensation (the average of the employee's 36 consecutive months of highest creditable compensation); (2) years of creditable service; and (3) age at retirement. In applying for service retirement on March 24, 2002, the grievant determined that the final compensation upon which his benefit would be based did not include the value of fringe benefits (perquisites) provided by the state. The grievant cites housing, utilities, health insurance, life insurance, automobile insurance, meals and retirement contributions as examples of the types of perquisites whose value he asserts should be considered in determining his average final compensation and retirement benefits.

The grievant claims that DOC is required by law to establish value for the perquisites provided by the state and include that amount in the creditable compensation reported to the VRS for computation of retirement benefits. The agency asserts that it has properly reported the grievant's earnings in accordance with directions from VRS.

DISCUSSION

Va. Code § 51.1-124.3 describes "creditable compensation" as "the full compensation payable annually to an employee working full time in his covered position" and states that "[i]n cases where compensation includes maintenance or other perquisites, the [VRS] Board shall fix the value of that part of the compensation not paid in money." In support of his request for a hearing, the grievant cites the above Code section, along with the following statute, IRS regulation, and case law:

- (1) Code of Va. § 2.2-1202 (formerly § 2.1-114.6), *Employee Compensation; annual review*. Directs the Director of the Department of Human Resource Management to conduct an annual comparability study of state employee compensation versus the private sector considering the economic value of fringe benefits.
- (2) IRS Publication 525, *Taxable and Nontaxable Income*. Publication discusses types of income and explains whether they are taxable or nontaxable.
- (3) Case law addressing benefits that qualify as compensation under a "term or condition of employment."

However, VRS, the agency charged with the responsibility of promulgating the state's retirement policy and procedures, has determined that "only compensation in the form of salary is eligible for inclusion as part of the reportable compensation for retirement." This determination is consistent with the definition of "creditable compensation" established in the VRS Handbook for Members: "a member's annual salary minus any overtime pay, payments of a temporary nature, or payments for extra duties."¹ The grievant has not identified, nor are we aware of, any VRS or other state agency policy or procedure requiring an employing agency like DOC to provide VRS with information about an employee's perquisites for purposes of computing retirement benefits. Thus, this grievance cannot be qualified for hearing on the basis of an alleged misapplication or unfair application of state or agency policy.

Moreover, neither DOC nor this Department is charged with the promulgation of state retirement policy or procedure. Thus, regardless of the merits of the grievant's claims vis-à-vis VRS's established determinations, this Department (and presumably DOC as well) must defer to those determinations. And while the grievant essentially asserts that VRS' determination regarding perquisites is contradictory to law, a grievance hearing is not the appropriate forum to resolve that issue. Absent sufficient evidence of improper discrimination, retaliation, or a misapplication or unfair application of policy,

¹ See VRS Handbook (November 2001) at page 48.

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this Department has long held that grievances based solely on alleged violations of law do not qualify for a hearing.²

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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² See Va. Code Section 2.2-3004(A) and (CC); *Grievance Procedure Manual* 4.1, pages 10-11.