

Issue: Qualification/Compensation/Leave – Leave Without Pay; Ruling Date:
September 16, 2002, Ruling #2002-149; 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 Corrections
Ruling Number 2002-149
September 16, 2002

The grievant has requested a ruling on whether his January 4, 2002 grievance with the Department of Corrections (DOC) qualifies for a hearing. The grievant claims that management misapplied or unfairly applied policy when they refused to honor his leave request for November 20, 2001 and placed him on 'Leave Without Pay'(LWOP) status, thereby docking his pay for the day.

FACTS

The grievant is employed as a Recreation Supervisor. He was scheduled to work on November 20, 2001, but failed to report to work or to call in sick, due to alleged illness. Accordingly, the facility placed the grievant on "leave without pay" and docked his pay for the eight hours he would normally have worked.¹

PRELIMINARY COMPLIANCE ISSUE

During this Department's review for this ruling, the grievant presented an additional issue which was not included in his grievance as filed: namely, that his request for sick leave for November 20, 2001 was denied in retaliation for his prior grievance activity. It has been the consistent position of this Department that once a grievance has been initiated, a grievant may not expand the grievance to raise new issues. Because the issue of retaliation was not presented in the written grievance, the issue cannot be added to this grievance. This Department's rulings on matters of compliance are final and nonappealable.²

DISCUSSION

All claims relating to issues such as the means, methods, and personnel by which work activities are to be carried out, and the transfer, reassignment, or scheduling of

¹ In a related action, the grievant was also issued a Group II Written Notice for failure to report to work as scheduled on November 20, 2001, without proper notice to supervision.

² Va. Code § 2.2-1001(5).

employees within the agency 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 been misapplied.³ The grievant contends that the agency misapplied or unfairly applied policy by refusing to honor his leave request and docking his pay for November 20, 2001.

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. In this case, DOC's Leave Policy provides that in the event of an unanticipated absence, employees "shall notify the supervisor no later than one-half hour after the beginning of the normal work hours," and that "an employee who fails to so notify the supervisor may be considered absent without leave."⁴ DHRM policy provides that an employee who is absent from work without approval "will be considered absent without proper authorization" and "will not be paid for the time away from work."⁵

It is undisputed that the grievant failed to provide notice to his supervisor of his unanticipated absence within one-half hour after his shift was to have started. Indeed, the grievant failed to provide any notice on the day of his absence. The agency merely exercised its discretion under policy to deny leave and to place the grievant in a LWOP status for his failure to provide the required notice. Thus, this grievance does not qualify for a hearing.

As part of his relief, the grievant requests that he "be allowed to take sick leave without interference from management" and that "management cease and desist from continual discipline for the same issue." The grievant should note that even if his claim of misapplication of policy were to be qualified and proven at a hearing, the relief that a hearing officer could grant would be limited to directing the agency to reapply the policy from the point at which it was misapplied. A hearing officer has no authority to change the contents of a policy. As cited above, policy expressly grants to management the authority to place an employee in a LWOP status if that employee fails to notify his supervisor of an unanticipated absence as required.

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

³ Va. Code § 2.2-3004(A) and (C); Grievance Procedure Manual § 4.1(b) and (c), pages 10-11.

⁴ See DOC Policy 5-12.10(D)(1) and (3).

⁵ See DHRM Policy 4.30 III(E)(1) and (2).

September 16, 2002

Ruling #2002-149

Page 4

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
Sr. Employment Relations Consultant