

Issue: Qualification/Compensation/Leave/Administrative Leave; Ruling Date: February 3, 2003; Ruling #2002-203; Agency: Department of Motor Vehicles; Outcome: not qualified.

*Department of Employment Dispute Resolution*

**QUALIFICATION RULING OF DIRECTOR**

In the matter of Department of Motor Vehicles  
Ruling Number 2002-203  
February 4, 2003

The grievant has requested a ruling on whether his August 5, 2002 grievance with the Department of Motor Vehicles (DMV) qualifies for a hearing. In his grievance, the grievant challenges management's issuance of a Group II Written Notice. The grievance also challenges his suspension from law enforcement duties as disciplinary.

FACTS

The grievant is employed as a Senior Special Agent. On July 9, 2002, he was issued a Group II Written Notice for allegedly demonstrating unprofessional behavior and conduct. In an addendum to the Written Notice, he was informed that a licensed professional must evaluate him in order to determine his fitness to continue duties as a Law Enforcement Officer.

On August 1, 2002, the grievant was informed that his fitness for duty assessment had been received, and based upon its findings, (that extended treatment would be necessary before he could safely resume law enforcement duties), the agency could not allow him to resume those duties until the noted deficiencies had been corrected. The grievant was relieved of all duties and offered several options.<sup>1</sup> From among the options offered, the grievant chose to receive outside treatment and use his sick leave balance to cover his absence.

On August 5, 2002, the grievant initiated two separate grievances, one challenging the Group II Written Notice and another challenging his suspension from Law Enforcement Officer duties and the requirement to receive treatment. At the first respondent step, the second grievance was administratively closed, and by mutual agreement, the suspension of duties and treatment issues were included in the first grievance challenging the Group II Written Notice.

The single grievance with the combined issues then proceeded through the respondent steps without resolution and the grievant requested qualification for hearing. In his qualification decision, the agency head determined that the suspension from duties and treatment issues were not a part of the disciplinary action and did not qualify for a hearing.

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<sup>1</sup> The options offered included: (1) maintaining his employment while using his accrued leave balances to undergo treatment, (2) resigning, (3) applying for disability retirement, or (4) applying for other DMV/State positions.

### DISCUSSION

By statute and under the grievance procedure, management is reserved the exclusive right to manage the affairs and operations of state government.<sup>2</sup> Thus, claims relating to issues such as the method, means and personnel by which work activities are to be carried out (to include the determination of employee fitness to perform law enforcement duties) 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 influenced management's decision, or whether state policy may have been misapplied.<sup>3</sup> In this case, the grievant contends that management's actions in suspending him from duty as a Law Enforcement Officer and in requiring that he undergo treatment to establish his fitness for duty as a Law Enforcement Officer were disciplinary and unwarranted.

Under the Standards of Conduct, a Written Notice accompanies formal disciplinary actions.<sup>4</sup> In the absence of an accompanying Written Notice, the challenged action would qualify for a hearing only if there is a sufficient question as to whether management's primary motivation was to correct or punish behavior, or to establish the professional or personal standards for the conduct of an employee.

Here, it is undisputed that management intended to discipline the grievant by issuing him a Group II Written Notice. However, management provided a non-disciplinary, business-related reason for its decision to suspend the grievant from duty -- essentially to protect the public safety. An internal investigation found evidence that the grievant had demonstrated unprofessional behavior that cast serious doubt on his fitness to safely perform the duties of a Law Enforcement Officer. In the interests of public safety, management acted well within its inherent authority to remove the grievant from the performance of such duties pending a fitness for duty assessment by (and later treatment from) a licensed professional. The grievant was later allowed to return to work following treatment. Accordingly, the undisputed facts in this case show that management's primary motivation in suspending grievant from duty was to protect the public safety rather than to discipline the grievant. For all the above reasons, the suspension and treatment issues do not qualify for a 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

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<sup>2</sup> See Va. Code § 2.2-3004(B).

<sup>3</sup> Va. Code § 2.2-3004(A) and (C); *Grievance Procedure Manual* § 4.1 (C), page 11.

<sup>4</sup> DHRM Policy No. 1.60, Standards of Conduct (VII).

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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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