

Issue: Qualification/Compensation/Leave/Salary Disputes; Ruling Date: January 24, 2003, Ruling #2002-221; Agency: Department of Juvenile Justice; Outcome: not qualified



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE AND QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Juvenile Justice
Ruling Number 2002-221
January 24, 2003

The grievant has requested a ruling on whether his September 3, 2002 grievance with the Department of Juvenile Justice (DJJ) qualifies for hearing. The grievant claims that the agency has misapplied or unfairly applied the state's policy on overpayments by involuntarily docking his pay to collect a salary overpayment. In addition, the agency asserts that the grievant is out of compliance with the grievance procedure because he added a new issue to his grievance following the agency head's denial of qualification, an issue that had not been included in his grievance as originally filed.

For the reasons discussed below, the agency's challenge on compliance is upheld. Furthermore, the issue of misapplication or unfair application of policy does not qualify for hearing.

FACTS

The grievant is employed as a Juvenile Corrections Officer Senior. On August 20, 2002, DJJ informed the grievant that starting on September 28, 2001, he had received salary overpayments of \$125.01 per pay period, resulting in a gross salary overpayment of \$2,750.25. The agency asserts that the overpayment was due to administrative error.

As a result of the overpayments, the agency informed the grievant that it intended to deduct, beginning on August 30, 2002, \$125.01 from his paychecks until the entire overpayment amount had been collected.

In his November 14, 2002 optional comments to the agency head's disqualification decision, the grievant presented an additional issue which was not included in his grievance as filed: namely, that the overpayment and collection action was the result of racial discrimination.

DISCUSSION

Compliance

Once a grievance has been initiated, additional claims may not be added.¹ Because the claim of racial discrimination was not presented in the original written grievance, the issue cannot be added now. This Department's rulings on matters of compliance are final and nonappealable.²

Qualification

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.

The applicable policy in this case is Topic 50510, the Payroll Accounting policy. Under Topic 50510, agencies are required to take appropriate steps to collect overpayments. Employees must first be notified of the overpayment and given repayment options to include full repayment by personal check or a mutually agreeable payroll docking schedule. If by payroll docking, repayment may not occur over a longer period than the period during which the overpayment occurred.

In the present case, the grievant acknowledges receipt of the overpayment amount cited by the agency for collection. Although he had no role in creating the overpayment situation, the policy provides the agency only a single option: in the absence of full repayment, the overpayment amount must be collected over a period not to exceed the period over which the overpayment occurred. In this case, the agency has complied with mandated policy by collecting the documented overpayment over an eleven month period. The grievant has provided no evidence to support his assertion that the overpayment was the result of deliberate action by his supervisor or to show that the agency misapplied policy or unfairly applied policy in collecting the overpayment amount from his salary. Therefore, this grievance does 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 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.

¹ *Grievance Procedure Manual*, § 2.4, page 6.

² Va. Code § 2.2-1000(5).

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