

Issue: Qualification/Compensation/Leave-Salary Disputes (e.g. deductions); Ruling
Date: March 19, 2003; Ruling #2003-003; 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 2003-003
March 19, 2003

The grievant has requested a ruling on whether her November 18, 2002 grievance with the Department of Corrections (DOC) qualifies for hearing. The grievant claims that the agency has misapplied policy by docking her pay to collect for her excess use of leave.

FACTS

The grievant is employed as a Corrections Institution Rehabilitation Counselor. In October 2002, an audit of the grievant's leave balances reflected that she had used 59.7 hours of excess leave.¹ On October 31, 2002, she met with the Human Resource Officer to discuss the issue. Although the facts are in dispute as to the information discussed during the meeting, the grievant contends that she was not made aware of the repayment options, did not agree upon a repayment schedule, and did not sign a repayment agreement. Upon receiving her November 15, 2002 paycheck, the grievant noted that her pay had been docked for repayment of 32.30 hours of excess leave usage.²

DISCUSSION

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 grievant claims that the agency has misapplied the leave reimbursement policy by docking her pay without her written permission.

¹ The grievant was absent due to medical illness from April 30, 2002 to July 29, 2002. On December 17, 2002, her absence was authorized under the Virginia Sick and Disability Program, which restored her leave balance.

² Repayment of the remaining 27.4 hours of excess leave was deducted from the grievant's December 2, 2002 pay.

In support of her request for a hearing, the grievant cites the following statute and policies:

- (1) Code of Virginia § 40.1-29 (C) (*Pay; Assignment of Wages; Sale of Merchandise to Employees*). Prohibits employers from withholding any part of an employee's wages or salaries except for payroll, wage, or withholding taxes or in accordance with law without the written and signed authorization of the employee.
- (2) DHRM Policy 4.30, *Leave Policies-General Provisions*. Mandates reimbursement by employees for excess use of leave.
- (3) DHRM *Policy Guide*. Provides guidelines for reimbursement of leave used in error.

Under DHRM Policy 4.30, employees are required to reimburse their agencies for the use of excess leave. Reimbursement may be in the form of money or annual, sick, compensatory, or overtime leave.³ Policy 4.30 does not mandate a specific procedure to which agencies must adhere in obtaining reimbursement. DHRM's Policy Guide, however, recommends, but does not mandate, that agencies (1) discuss the error with the employee as soon as it is discovered, (2) explain that repayment is required, (3) provide options for repayment, (4) have the employee sign a repayment agreement, and (5) have repayment agreements reviewed and approved by the Office of the Attorney General before they are used.⁴

Another applicable policy in this case is the Department of Accounts' (DOA's) Topic 50510, the Payroll Accounting policy. Under Topic 50510, agencies are required to collect overpayments. Topic 50510 indicates that employees should first be notified of the overpayment and given repayment options to include full repayment by personal check or a mutually agreeable payroll docking schedule.⁵ If by payroll docking, repayment may not occur over a longer period than the overpayment occurred.⁶ As with the DHRM Policy and Policy Guide, although Topic 50510 establishes guidelines, it creates no policy mandates outlining specific procedures to which agencies must adhere in obtaining reimbursement from employees. Thus, this grievance cannot be qualified for hearing on the basis of an alleged misapplication or unfair application of policy – there are no facts that raise a sufficient question as to whether a mandatory policy provision was violated or whether the reimbursement method was so unfair as to amount to a disregard of applicable DHRM or DOA policy.

³ See DHRM Policy 4.30(D)(2).

⁴ During our investigation of this matter, DHRM stated that the contents of the policy guide do not constitute official policy. The guide is intended solely as an aid to agencies.

⁵ Topic 50510, page 5.

⁶ *Id.*

Although a state statute precludes employers from withholding any part of an employee's salary without their written permission, and we are aware of no evidence that the agency obtained a signed agreement from the grievant prior to docking her pay, a grievance hearing is not the appropriate forum to resolve that issue.⁷ Absent sufficient evidence of improper discrimination, retaliation, or a misapplication or unfair application of policy, this Department has long held that grievances based solely on alleged violations of law do not qualify for a hearing.⁸

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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Director

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⁷ While one could assert that state policy should incorporate the statutory requirement that a written agreement precede a docking of pay, grievances based solely on the contents of personnel policies do not qualify for hearing. See *Grievance Procedure Manual* § 4.1 (c)(2).

⁸ See Va. Code Section 2.2-3004(A) and (C); *Grievance Procedure Manual* 4.1, pages 10-11.