

Issue: Qualification/Compensation/Leave-Salary Disputes; Ruling Date: March 19, 2003;
Ruling #2003-022; Agency: Department of Forestry; Outcome: not qualified



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Forestry
Ruling Number 2003-022
March 19, 2003

The grievant has requested a ruling on whether her December 20, 2002 grievance with the Department of Forestry (DOF) qualifies for a hearing. The grievant claims that management misapplied policy by erroneously classifying her 1992 transfer (from a full-time classified position to a permanent part-time position) as a resignation/rehire. For the reasons set forth below, this grievance does not qualify for a hearing.

FACTS

Until her layoff on December 31, 2002, the grievant was employed as an Administrative Program Specialist III. The grievant was originally employed by the agency as a full-time classified employee from February 1, 1988 to June 15, 1992. On April 2, 1992, she requested a lateral transfer to a part-time classified position. In her request, she stated that she would like to "quit full-time June 1, 1992 and begin part-time September 1, 1992." The grievant's request for transfer to the part-time classified position was approved effective September 1, 1992, and she resigned her classified full-time position effective on June 15, 1992.

The grievant contends that it was her belief that her official status was "leave without pay" during the three-month transition period. Agency human resource officials, however, determined that her status should be "resigned" effective June 15, 1992 and "rehired" effective on September 1, 1992. As a result, the grievant was not credited for the time between June 15 and September 1, 1992, resulting in a break in state service. Accordingly, upon her layoff on December 31, 2002, the grievant was ineligible to receive severance benefits.¹ As relief, the grievant asks that DOF and DHRM records be corrected to reflect no break in her state service, thereby making her eligible for severance benefits.

DISCUSSION

¹ See DHRM Policy 1.30, *Layoff Benefits for Certain Restricted and Part-time Employees*, page 8. Under Policy 1.30, an employee who has a break in service between the full-time non-restricted classified position and the part-time classified position is not eligible for layoff benefits.

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 policies in this case are DHRM Policies 1.70 and 4.45. Under Policy 1.70, resignation is defined as an employee's voluntary separation from state service. The date of separation is the last day the employee worked.² Under Policy 4.45, employees on conditional leave without pay are guaranteed reinstatement to their last-occupied position only if their position is available when they desire to return from leave. If on unconditional leave without pay, an employee is guaranteed reinstatement to their last-occupied position upon return from leave.³ In this case, however, Policy 4.45 is inapplicable, because the grievant would not have been returning to the position last occupied before departing on leave, but rather to a different part-time position.

Finally, the Director of the Department of Human Resource Management (DHRM), the agency charged with the responsibility of promulgating and interpreting policy for the termination and separation of employees, has issued a policy interpretation regarding this case.⁴ DHRM's interpretation concludes that the action taken by the agency complies with human resource policies that were in effect at the time, is supported by documentation, and represents official state record. In light of all the above, this grievance fails to raise a sufficient question as to whether policy was misapplied or unfairly applied.

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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² See DHRM Policy 1.70, *Termination/Separation From State Service*, Section II (A) (1) and IV (B).

³ See DHRM Policy 4.45, *Leave Without pay-Conditional and Unconditional*, Section II (A) and (C).

⁴ See December 10, 2002 letter to the State Forester from the DHRM Director.

