

Issue: Qualification/Discipline/Group II, Non-termination, Written Notice; Ruling Date:
February 21, 2003; Ruling #2003-027; Agency: Department of Minority Business
Enterprise; Outcome: Qualified



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Minority Business Enterprise/ No. 2003-027
February 21, 2003

The grievant has requested a ruling on whether her January 9, 2003 grievance with the Department of Minority Business Enterprise (the agency) qualifies for a hearing. The grievant challenges the issuance of a Group II Written Notice. As discussed below, this grievance qualifies for a hearing.

FACTS

The grievant is a Policy & Planning Specialist II with the agency. On December 16, 2002, management issued the grievant a Group II Written Notice (Written Notice) for leaving the worksite during work hours without permission. On January 9, 2003, she timely initiated a grievance with her immediate supervisor, the agency head, challenging the agency's disciplinary action and requesting the removal of the Written Notice. The agency head denied the grievant's request for relief. On January 24, 2003, the grievant advanced her grievance to the qualification phase for the agency head to determine whether the issue presented qualified for a hearing.¹ Subsequently, the agency head denied qualification, asserting that the agency's actions were consistent with written policy.²

DISCUSSION

The Commonwealth's policy "as an employer, [is] to encourage the resolution of employee problems and complaints."³ To that end, the General Assembly has determined that "the grievance procedure shall afford an immediate and fair method for the resolution of employment disputes that may arise between state agencies and those

¹ The grievance procedure includes *not more than* three successively higher grievance resolution steps and a formal hearing. *See* Va. Code § 2.2-3003(A) (emphasis added); *Grievance Procedure Manual* § 1.4, page 4. Thus, although most workplace disputes can be grieved through three successively higher levels of agency management, in cases where an employee reports directly to an upper level respondent or the agency head (such as here), the steps in the process may be compressed.

² *See* Form A, Qualification for Hearing/Agency Head, dated January 31, 2003.

³ Va. Code § 2.2-3000(A).

employee who have access to the procedure.”⁴ While most grievances may proceed through the management resolution steps if the grievant so chooses,⁵ only grievances that challenge certain actions can proceed to a hearing before a hearing officer.⁶

In this case, the grievant challenges a disciplinary action by management -- the issuance of a Written Notice. By statute and under the grievance procedure, all formal disciplinary actions (i.e., Written Notices and those suspensions, demotions, transfers and assignments, and dismissals resulting from formal discipline) *automatically* qualify for a hearing.⁷ Therefore, while the agency contends that management’s actions were warranted and appropriate under the given circumstances, the grievant is entitled by statute and the grievance procedure to advance this grievance to a hearing, at which time each party may present their case.

CONCLUSION

For information regarding the actions the grievant may take as a result of this ruling, please refer to the enclosed sheet. Additionally, please note that this qualification ruling is not a determination regarding the merits of the grievant’s claim.

Claudia T. Farr
Director

Susan L. Curtis
Employment Relations Consultant

⁴ *Id.*

⁵ If the employee does not have access to the grievance procedure at the time of the initiation of the grievance, then management is not required to proceed with the resolution step process. *See Grievance Procedure Manual* § 2.3, page 5; *see also Grievance Procedure Manual* § 2.4, pages 6-7 for instances where the agency may administratively close a grievance for noncompliance with the grievance procedure.

⁶ Va. Code § 2.2-3004(A); *Grievance Procedure Manual* § 4.1(a)-(c), pages 10-11. For purposes of determining qualification for a hearing, agency actions are divided into three categories: Actions Which *Automatically* Qualify, Actions Which *May* Qualify and Actions Which *Do Not* Qualify.

⁷ *Id.* Dismissals for unsatisfactory performance also automatically qualify for a hearing.