

Issue: Qualification/Performance/Arbitrary/Capricious; Ruling Date: April 4, 2003;  
Ruling #2003-038, 2003-039; Agency: Department of General Services; Outcome: not  
qualified



*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of General Services  
Ruling Nos. 2003-038 and 2003-039  
April 4, 2003

The grievant has requested a ruling on whether her November 27, 2002 grievance with the Department of General Services (DGS or agency) qualifies for a hearing. The grievant claims that management gave her an arbitrary or capricious rating in one element of her 2002 performance evaluation and for relief, asks that the rating for that element be raised to "Contributor." Further, the grievant seeks removal of any and all language in the performance evaluation regarding her alleged negative encounters, lack of teambuilding skills, and poor or troubled timekeeping skills. For the reasons discussed below, this grievance does not qualify for hearing.

Additionally, the agency seeks consolidation of the November 27, 2002 grievance with four previously initiated grievances. Because this Department has denied qualification of the four earlier grievances,<sup>1</sup> a consolidation ruling is unnecessary.

FACTS

The grievant is a laboratory specialist in the Division of Consolidated Laboratory Services (DCLS) at DGS. On October 31, 2002, she received an overall annual performance evaluation of "Contributor." However, the grievant received a rating of "Below Contributor" in the "Teambuilding and Teamwork" section of the performance evaluation. Additionally, the grievant received a rating of "Below Contributor" in the Agency/Department Objectives section entitled "Be agency of choice for employees." In the section entitled "Other significant results for the performance cycle:" the grievant was cited as having problems with timekeeping practices. The agency head denied qualification, and the grievant subsequently requested that the Director of this Department qualify the grievance for hearing.

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<sup>1</sup> See Qualification Ruling of Director, Ruling Nos. 2002-208, 2002-209, 2002-210, 2002-211 and 2002-212, March 18, 2003.

## DISCUSSION

### *Arbitrary and Capricious Performance Evaluation*

The grievance statute and procedure reserve to management the exclusive right to establish performance expectations and to rate employee performance against those expectations.<sup>2</sup> Accordingly, to qualify this issue for a hearing, there must be facts raising a sufficient question as to whether the grievant's performance rating was "arbitrary or capricious."<sup>3</sup>

"Arbitrary or capricious" means that management determined the rating without regard to the facts, by pure will or whim. An arbitrary or capricious performance evaluation is one that no reasonable person could make after considering all available evidence. If an evaluation is fairly debatable (meaning that reasonable persons could draw different conclusions), it is not arbitrary or capricious. Thus, mere disagreement with the evaluation or with the reasons assigned for the ratings is insufficient to qualify an arbitrary or capricious performance evaluation claim for a hearing when there is adequate documentation in the record to support the conclusion that the evaluation had a reasoned basis related to established expectations.<sup>4</sup> However, if the grievance raises a sufficient question as to whether a performance evaluation resulted merely from personal animosity or some other improper motive--rather than a reasonable basis--a further exploration of the facts by a hearing officer may be warranted.

Teambuilding and Teamwork Rating: The grievant claims that the "Below Contributor" rating in this section of her 2002 performance evaluation should be changed to "Contributor." In support of her claim, the grievant asserts that the statements contained in the performance evaluation to support the "Below Contributor" rating are unsubstantiated, fabricated and based on personal disdain or intolerance. Additionally, the grievant asserts that she is an exceptional employee that had no problems with teamwork or teambuilding until her employment with DCLS. Further, the grievant claims that the previous employees within her division suffered the same circumstances and poor treatment by management.

Agency of Choice Rating: In this section of the grievant's performance evaluation, the grievant is given a "Below Contributor" rating for failing to promote teamwork and for contributing to a negative working environment. The grievant alleges that these assertions are untrue and should be removed from her performance evaluation. In support of her claim, the grievant states that she did not initiate the alleged hostile

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<sup>2</sup> See Va. Code §2.2-3004(B)(reserving to management the exclusive right to manage the affairs and operations of state government).

<sup>3</sup> See Va. Code §2.2-3004(A); *Grievance Procedure Manual* §4.1(b), page 10.

<sup>4</sup> *Norman v. Department of Game and Inland Fisheries* (Fifth Judicial Circuit of Virginia, July 28, 1999) (Delk, J.).

working environment at DGS and has tried to improve work conditions, but has met uncooperative behavior by her colleagues and supervisor. Additionally, the grievant claims that when she asked to see documentation in support of the rating, her supervisor gave her a statement by a co-worker dated September 20, 2002 describing the grievant's alleged hostile and threatening behavior. The grievant counters that rating her performance as "Below Contributor" on one alleged and unfounded complaint, which occurred within one month's time of the performance evaluation, is ludicrous and unfair, thus rendering the work environment "equally or more hostile than the environment she is purportedly creating for her co-workers."

In support of the "Below Contributor" ratings in the "Teambuilding and Teamwork" and "Be agency of choice" sections of the grievant's performance evaluation, the agency has produced extensive documentation detailing the grievant's past negative encounters and interactions with DGS employees. Specifically, the agency provided this Department with two counseling memoranda addressed to the grievant regarding her unacceptable behavior toward co-workers and/or members of management and poor teambuilding skills. Additionally, the agency provided a May 10, 2002 Interim Evaluation, which states that the grievant "had several encounters with group members that adversely effected teambuilding." Moreover, the agency provided documentation of several co-worker complaints during the evaluation period regarding the grievant's alleged hostile and harassing behavior.

Other significant results for the performance cycle: In this section of the grievant's performance evaluation, the agency states that the grievant has had problems with timekeeping practices. The grievant asserts that this statement is "grotesquely misleading" and an "outright lie." She further claims that she has never falsified, misrepresented, or skewed work or leave hours, but has worked past her designated work hours without compensation to "ensure the best quality in her work and to review her work."

In support of its claim that the grievant has had problems with timekeeping practices, the agency presented an Interim Evaluation dated May 10, 2002 that recognizes previous unresolved disagreements over timekeeping practices. Additionally, the agency produced a counseling memorandum addressed to the grievant regarding her poor timekeeping records. Moreover, the agency produced extensive documentation prepared by the grievant's supervisors and the senior scientist detailing the grievant's daily actions with regard to her whereabouts during work hours, her time spent on personal phone calls, and when she arrived to work late or left early.

The grievant's previous work history and the history of others formerly employed within DGS are irrelevant to the appropriateness of the grievant's performance evaluation. Moreover, in light of all the above, this Department concludes that there is insufficient evidence to support the grievant's assertion that her rating on the "Teamwork and Teambuilding" responsibility was determined without a basis in fact or resulted from anything other than management's reasoned evaluation of her performance in relation to

established performance expectations. This Department further concludes that there is insufficient evidence in support of the grievant's assertion that the comments contained in the "Be agency of choice" and "Other significant results during the performance cycle" sections were determined without a basis in fact or resulted from anything other than management's reasoned evaluation of her performance in relation to established performance expectations. Accordingly, 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 notifies the agency that she wishes to conclude the grievance.

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Claudia T. Farr  
Director

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