

Issue: Qualification/Compensation/Leave; Salary Disputes; Ruling date: June 17, 2003;
Ruling #2003-073; 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/ No. 2003-073
June 17, 2003

The grievant has requested a ruling on whether her February 7, 2003 grievance with the Department of Corrections (DOC) qualifies for a hearing. The grievant claims that DOC improperly deducted 2.7 hours of pay and did not notify her of the deduction. For the following reasons, this grievance does not qualify for a hearing.

FACTS

The grievant is a Corrections Officer Senior with DOC. She was scheduled to work the evening shift on December 25, 2002. She called in approximately three hours before her shift was to begin and notified the Shift Commander then on duty (the Lieutenant) that she would be late reporting for her upcoming shift. The Lieutenant noted in the log book that her reason for reporting late was because she had family in town for Christmas. The grievant alleges that she never informed the Lieutenant of her reason for being late and that his notation amounts to falsification of an official state document. She later informed the agency that the reason she was late was because her husband, who has a long-term illness, was not feeling well and she needed to stay with him until their son arrived.

On December 25, the grievant reported to work 2.7 hours after her shift began. When she arrived, the Shift Commander on her shift, the Captain, commented that he had family in town as well and questioned what would have happened had other employees called in late for the same reason. The grievant did not reply to this comment. Later, on January 1, 2003, the Captain met with the grievant and informed her that she was going to be placed on leave without pay (LWOP) for the 2.7 hours missed on December 25. Furthermore, on January 3, the grievant's supervisor gave her an unsigned copy of her 28-day cycle sheet, reflecting LWOP for 2.7 hours on December 25. The money was deducted from her January 16, 2003 paycheck.

The grievant claims that it is a misapplication of policy to dock her pay, because the Lieutenant had replied "okay" when she informed him she would be late, thus excusing her absence.¹ She further claims that he should be punished under the Standards of Conduct for

¹ The grievant also claims in her grievance that the docking of her pay amounts to theft and asks that those involved be investigated and charged with petty larceny. Although all complaints may proceed through the resolution steps set forth in the grievance statute, thereby allowing employees to bring their concerns to management's attention, only certain issues qualify for a hearing. For example, while grievable through the

listing a false reason for her tardiness. Moreover, the grievant contends that she was not given proper notification from DOC that her pay was to be docked.²

The agency claims that the grievant did not provide an adequate reason for her tardiness, and that no approval was given. Moreover, the agency stated that the Shift Commander *on the employee's shift* provides the approval, *not* the Shift Commander on duty when an employee phones in.³ Therefore, the agency argues, the Lieutenant could not have approved the grievant's absence when he replied "okay;" he was merely acknowledging that he received her message. Finally, the agency argues that the grievant received adequate notice of her pay being docked during meetings with the Captain.

DISCUSSION

For an allegation of misapplication 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. In this case, DOC's Leave Policy and the grievant's facility's Institutional Operating Procedure (IOP) provide that in the event of an unanticipated absence, employees "shall notify the officer in charge . . . at least two hours before the beginning of their shift if they will be absent."⁴ The policies further state that "notification does not mean leave will be approved."⁵ In this case, the agency determined that the grievant's excuse for reporting late was inadequate and did not approve her request for leave. The grievant and DOC disagree about which reason, if any, the grievant provided when she called in.⁶ However, regardless of any reason she might have provided, policy gives full discretion to management to approve or not approve unscheduled leave. Therefore, it appears that there was not a misapplication of any mandatory policy provision.

Even where there is no violation of a mandatory policy provision, an unfair application of policy may exist where the challenged action, in its totality, was so unfair as to amount to a disregard of the intent of the applicable policy. In this case, the grievant claims she was late because her husband was ill, which a reasonable fact-finder could view as an excusable emergency, depending on all the facts and circumstances.⁷ However, the grievant has not provided any supporting documentation. Without sufficient proof that her husband

management resolution steps, alleged criminal conduct is not among the issues identified by the General Assembly as qualifying for a grievance hearing. Va. Code § 2.2-3004; *Grievance Procedure Manual* § 4.1, pages 10 and 11.

² Specifically, the grievant alleges that she should have had an opportunity to sign and receive a copy of the Notification of Pay Docking slip and to fully explain her reason for being late on Christmas Day.

³ According to agency policy, employees notify the agency at least two hours before their shift begins. See DOC Policy 5-12.10(D)(2). Therefore, the grievant notified the Shift Commander on the prior shift, not her own.

⁴ DOC Policy 5-12.10(D)(2); see also IOP 201(M)(1).

⁵ DOC Policy 5-12.10(D)(4) and IOP 201(M)(1).

⁶ The grievant asserts that she was never asked for a reason for her tardiness nor did she offer one. It should be noted that when an employee calls in to inform that he/she will be tardy or absent, the name, date, time of call *and the reason for the absence* or delay are routinely entered in to the facility log.

⁷ DOC argues that the grievant provided another reason when she called in - that she had company. The grievant contends that she provided no reason when she called in. It was not until she filed her grievance that the grievant claimed she was late because of her husband's illness.

was ill, and that she was therefore forced to be late as a result of an emergency, it cannot be concluded that DOC unfairly applied policy. Therefore, because management has discretion whether or not to approve unscheduled absences and because there is no evidence that policy was unfairly applied, this issue does not qualify for a hearing.

The grievant further argues that DOC should have notified her that her pay would be docked for her absence on December 25. In light of the undisputed facts, it appears that the grievant was aware that her time would be docked prior to it happening.⁸ However, under policy, the agency was under no obligation to provide the grievant with a copy of her Pay Docking slip or any other paperwork reflecting her loss of pay. According to state and agency policy, there are two types of LWOP.⁹ The first kind, conditional, may result in discharge if the position is not available when the employee returns from LWOP. The second, unconditional, guarantees reinstatement. The grievant's status on LWOP was unconditional. Policy requires that notice be given to employees for *conditional* LWOP, but does not require the agency to notify the employee for *unconditional* LWOP.¹⁰ Because state and agency policies did not require notice, in this instance, DOC cannot be found to have misapplied policy.

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 the qualification 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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⁸ As noted above, the Captain informed the grievant on January 1 that she was being placed on LWOP. Also, the grievant saw her 28-day cycle sheet on January 3, which reflected LWOP for 2.7 hours on December 25.

⁹ DHRM Policy 4.45; *see also* DOC Policy 5-12.17 which states that "[a]bsence without prior approval may be charged as leave without pay, even though an earned leave balance exists."

¹⁰ *Id.*