

Issue: Qualification/Leave without Pay; Ruling date: June 30, 2003; Ruling #2003-083;
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 2003-083
June 30, 2003

The grievant has requested rulings on whether her February 15, 2003 grievance with the Department of Corrections (DOC) qualifies for hearing. The grievant claims that the agency has misapplied its Leave Absence policy by failing to keep accurate leave records and by failing to timely advise her of being placed in a Leave Without Pay status.

FACTS

The grievant is employed as a Corrections Officer. In February 2002, an audit of the grievant's leave balances reflected that she had used 30 hours of excess leave. Reimbursement procedures were implemented, which resulted in the grievant being retroactively placed on periods of leave without pay.¹ Additionally, the grievant's pay was docked on her February 28, 2003 paycheck for repayment of 30 hours of excess leave usage.

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 policy by failing to keep accurate leave records and by failing to timely advise of her of being placed in a Leave Without Pay status.

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

- (1) DOC Policy 5-12.17 (C) (*Leave Without Pay-Conditional/Unconditional*). Recommends that supervisors or human resource personnel advise employees in writing of any approval of leave without pay status.

¹ The grievant had insufficient leave balances for pay periods: 11/10/02-11/24/02; 11/25/02-12/09/02; 12/10/02-12/24/02; and 12/25/02-01/09/03.

- (2) DOC Policy 5-12.24 (1). Assigns responsibility to organizational unit heads and supervisors for keeping accurate, up-to-date leave records.²

In addition to the above cited policies, DHRM Policy 4.30, *Leave Policies-General Provisions* is applicable in this case. Under this policy, employees are required to reimburse their agencies for the use of excess leave.³ Reimbursement may be in the form of money or annual, sick, compensatory, or overtime leave.⁴

In the present case, the grievant acknowledges that she used 30 hours of excess leave. Further, she acknowledges that under policy, she must reimburse her agency for the use of the excess leave. Nevertheless, the grievant asserts that she would not have used the excess leave had the agency maintained accurate, up-to-date leave records as required by DOC Policy 5-12.24(1).

In this instance, the agency admits that the grievant's leave records were not accurate and that she should have been informed that she had insufficient leave balances to cover her absences. While the agency may have been remiss in fulfilling its responsibility, its failure to do so competently does not constitute a misapplication of or unfair policy. Further, both the DHRM and DOC Policies assign employees with the ultimate responsibility for maintaining the accuracy of their individual leave records.⁵

The grievant further asserts that the agency misapplied policy by not advising her in writing of her placement in a leave without pay status. In this case, neither DHRM Policy 4.45 nor DOC Policy 5-12.17 mandates written or verbal notification to an employee placed on unconditional leave without pay.⁶ Additionally, the grievant was verbally notified of the oversight on February 11, 2003, the same date that the records audit discovered the excess leave usage. In light of all of 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

² Policy 5-12.24 also requires notification of the payroll officer when an employee uses leave in excess of earned leave.

³ See DHRM Policy 4.30 III (D)(2).

⁴ Id.

⁵ See DHRM Policy 4.30 III (D) (2) and DOC Policy 5-12.24 (A) (2).

⁶ See DHRM Policy 4.45 V (A) which states that agencies should explain in writing certain policy provisions to employees who are placed on conditional leave without pay. The grievant's leave, however, would have been considered unconditional. See also DOC Policy 5-12.17 (C) which also applies to conditional leave. It should be noted that DHRM policy 4.45 does not expressly grant an employee the right to use unconditional leave without pay for reasons other than educational, military, or personal purposes, including illness where the employee does not have or wish to use accrued leave. However, it would certainly appear to be improper to place an employee on conditional leave without pay for using excessive leave, because conditional leave without pay would not guarantee reinstatement to his or her position upon the expiration of the conditional leave period.

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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