

Issue: Qualification/Discipline/Group I – Nontermination; written notice only; Ruling date: July 17, 2003; Ruling #2003-121; Agency: Department of Forestry; Outcome: qualified



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

**QUALIFICATION RULING OF DIRECTOR**

In the matter of Department of Forestry  
Ruling Number 2003-121  
July 17, 2003

The grievant has requested a ruling on whether his March 18, 2003 grievance with the Department of Forestry qualifies for a hearing. The grievant challenges a Group I Written Notice. As discussed below, the grievance qualifies for a hearing.

FACTS

The grievant is employed as a Natural Resource Specialist II. On February 18, 2003, the grievant was issued a Group I Written Notice for unsatisfactory job performance. On March 18, 2003, he initiated the present grievance challenging the agency's disciplinary action and requesting removal of the Written Notice. The agency denied the grievant's requests for relief. On May 14, 2003, the grievant advanced his grievance to the qualification phase for the agency head to determine whether the issues presented qualified for hearing. The agency head denied qualification, asserting that the grievant had failed to provide sufficient justification to warrant qualification for a hearing. The grievant has requested this Department to qualify the March 18, 2003 grievance for hearing.<sup>1</sup>

DISCUSSION

The Commonwealth's policy "as an employer, [is] to encourage the resolution of employee problems and complaints."<sup>2</sup> 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 employee who have access to the procedure."<sup>3</sup> While most grievances may proceed through the management resolution steps if the grievant so chooses,<sup>4</sup> only grievances that challenge certain actions can proceed to a hearing before a hearing officer.<sup>5</sup>

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<sup>1</sup> See Form A, Qualification for Hearing/Agency Head, dated May 16, 2003.

<sup>2</sup> Va. Code § 2.2-3000 (A).

<sup>3</sup> *Id.*

<sup>4</sup> 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*

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.<sup>6</sup> Therefore, 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. Accordingly, the March 18th grievance is qualified for hearing.

### 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 claims.

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Claudia T. Farr  
Director

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June M. Foy  
EDR Consultant, Sr.

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*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.

<sup>5</sup> 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.

<sup>6</sup> *Id.* Dismissals for unsatisfactory performance also automatically qualify for a hearing.