

Issue: Qualification/Compensation/Leave; Ruling date: September 5, 2003; Ruling #2003-152; Agency: Department of Juvenile Justice; Outcome: not qualified



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Juvenile Justice
Ruling Number 2003-152
September 5, 2003

The grievant has requested a ruling on whether her July 11, 2003 grievance with the Department of Juvenile Justice (DJJ or the agency) qualifies for a hearing. The grievant claims that management misapplied or unfairly applied policy when they denied her leave request for June 13, 2003 and when she failed to come to work on that day, placed her on "Leave Without Pay"(LWOP) status, thereby docking her pay for the day.¹

FACTS

The grievant is a Senior Correctional Officer with DJJ. On January 15, 2003, the grievant requested leave for June 13, 2003 to attend her son's graduation from middle school. The grievant's request for leave was denied due to staffing shortages for that day. On June 12, 2003, the grievant called her work facility and informed a sergeant that she would not be at work on June 13, 2003 due to her son's graduation on that day. The grievant's absence from work was not approved. On June 14, 2003, the grievant was informed that she would be charged LWOP for June 13, 2003 for failing to report to work as scheduled.

DISCUSSION

All claims relating to issues such as the means, methods, and personnel by which work activities are to be carried out, and the transfer, reassignment, or scheduling of employees within the agency, generally do not qualify for hearing, unless the grievant presents evidence raising a sufficient question as to whether discrimination, retaliation, or discipline may have improperly influenced management's decision, or whether state policy may have been misapplied.² This grievance presents no claim or evidence of improper discrimination or retaliation; therefore the grievant's claim of unfair or misapplication of policy will be the only issue addressed in this ruling.

¹ The grievant does not specifically assert misapplication or unfair application of policy on Form A of her grievance. However, because the agency relied upon state policy when charging the grievant with LWOP for June 13, 2003 and the grievant challenges that action, her claims can be construed as a misapplication or unfair application of policy claim.

² Va. Code § 2.2-3004(A) and (C); *Grievance Procedure Manual* § 4.1(b) and (c), pages 10-11.

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.

In this case, the applicable policy is Department of Human Resource Management (DHRM) Policy No. 4.30; *Leave Policies – General Provisions*. Policy 4.30 states “[w]hen practicable, and for as long as the agency’s operations are not affected adversely, an agency should attempt to approve an employee’s request for a leave of absence for the time requested by the employee.”³ Policy No. 4.30 further provides that “if an agency does not approve an employee’s request for leave, but the employee still takes the requested time off from work”, and the agency chooses to take action against the employee, the employee “will be considered absent without proper authorization” and “will not be paid for time away from work.”⁴

It is undisputed that the grievant requested leave to attend her son’s middle school graduation, but was denied leave due to the need to have her at work to carry on agency operations. It is further undisputed that the grievant called into work on the evening of June 12, 2003 and informed staff that she would be absent from work the following day due to her son’s graduation. Due to the grievant’s failure to report to work on June 13, 2003 without prior approval for leave for that day, the agency merely exercised its discretion under policy to place the grievant in a LWOP status. Because the agency’s actions were fully compliant with state policy, 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 wishes to conclude the grievance and notifies the agency of that desire.

Claudia T. Farr
Director

³ DHRM Policy 4.30 III(C)(1).

⁴ See DHRM Policy 4.30 III(E)(1) and (2). Under this policy, the agency could have taken disciplinary action against the grievant. DHRM Policy 4.30 III(E)(4). The agency elected not to discipline the grievant.

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