

Issue: Qualification/Compensation/Leave/Salary Disputes; Ruling Date: October 30, 2003;  
Ruling #2003-168; Agency: Department of Corrections; Outcome: not qualified (keywords =  
lateral transfer, reduced salary)



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

**QUALIFICATION RULING OF DIRECTOR**

In the matter of Department of Corrections/ No. 2003-168  
October 30, 2003

The grievant has requested a ruling on whether her August 5, 2003 grievance with the Department of Corrections (DOC) qualifies for a hearing. The grievant claims that DOC wrongfully reduced her salary when she laterally transferred from one facility to another. For the following reasons, this grievance does not qualify for a hearing.

**FACTS**

The grievant is a Correctional Officer with DOC. On June 30, 2003, the grievant received a letter from DOC confirming her lateral transfer from Facility A to Facility B, to be effective July 10. The letter further stated that her salary would remain the same. When the grievant reported to Facility B on July 10, she received a corrected letter, stating that she was receiving a pay decrease.

The grievant initiated her grievance on August 5, 2003, claiming that DOC unfairly applied policy by not honoring its June 30 memorandum. She is also troubled that no one notified her of the error prior to her start date. Management's response is that there was simply a mistake in stating in the June 30 letter that her salary would remain the same. The agency claims that the grievant transferred from a "Level 5" security facility to a lower-level security facility and that employees at Level 5 facilities receive a 4.56% competitive salary differential. Employees who transfer from a Level 5 facility to a Level 4 or below do not retain the salary differential. The grievant claims that even if the salary stated in the memorandum was a mistake, the agency, not she, should bear the effects. She further claims that the salary change adversely affected her because she made personal changes based on the belief that her salary would not change with her transfer.

**DISCUSSION**

For a claim of misapplication 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 controlling policy in this grievance is Department of Human Resource Management (DHRM) Policy No. 3.05, *Compensation*.<sup>1</sup> According to Policy 3.05, agencies may make "base pay adjustments to make salaries more

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<sup>1</sup> DHRM Policy 3.05, effective September 25, 2000, revised March 1, 2001.

competitive with the market,” with DHRM’s approval.<sup>2</sup> The policy further states that “[w]hen an employee moves from one position to another, any differential that might apply to the former position is removed if it does not apply to the new position.”<sup>3</sup> In 1998, DOC and DHRM established a salary differential for four of DOC’s “super maximum” security facilities, in order to “recognize special security requirements” for employees in these institutions.<sup>4</sup>

Facility A is one of these super maximum security institutions. Facility B is not. Under DHRM Policy 3.05, the salary differential that applies to Facility A does not apply to Facility B and therefore must be removed when an employee transfers from Facility A to Facility B. The salary stated in the June 30 memorandum was incorrect according to DHRM policy. Therefore, it would have been a misapplication of policy to allow that salary to stand, thus allowing one employee to benefit over others due to a correctable management error.

Therefore, while the grievant’s disappointment with DOC’s error and the way in which it was handled is understandable, DOC properly applied the policy guidelines in offering this corrected salary to the grievant. DOC’s action in reducing the grievant’s salary did not violate a mandatory policy provision nor was it so unfair as to amount to a disregard of the intent of the applicable policy. Further, while this grievance appears to challenge an alleged breach of the June 30 memorandum, such a challenge is not among the issues identified by the General Assembly that may qualify for a hearing.<sup>5</sup> 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 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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Claudia T. Farr  
Director

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Leigh A. Brabrand  
EDR Consultant

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<sup>2</sup> DHRM Policy 3.05, “Differentials,” page 18 of 21.

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

<sup>4</sup> See Memorandum from DHRM Compensation Consultant, dated August 27, 1998 (establishing a two-step (4.57%) differential for employees in DOC’s super maximum security institutions).

<sup>5</sup> See Va. Code § 2.2-3004(A).