

Issue: Qualification/Discipline/ Suspension pending criminal investigation; Ruling Date: November 25, 2003; Ruling #2003-444; Agency: Department of Corrections; Outcome: not qualified



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of the Department of Corrections
Ruling Number 2003-444
November 25, 2003

The grievant has requested a qualification ruling in the September 2, 2003 grievance that she initiated with the Department of Corrections (DOC or Agency). The grievant asserts that the agency wrongfully suspended her. For the reasons set forth below, this grievance is not qualified for hearing.

FACTS

The grievant is employed as a Correctional Officer. On or about the August 11, 2003, the grievant was placed on suspension without pay pending the outcome of a criminal investigation. As of the date of this ruling, the criminal investigation has not been concluded.

DISCUSSION

By statute and under the grievance procedure, management has the exclusive right to manage the affairs and operations of state government.¹ Inherent in this authority is the responsibility and discretion to remove employees from the work place without pay if there is sufficient evidence that criminal activity may have occurred. State policy permits an agency to suspend without pay an employee who is the subject of a criminal investigation.² Under state policy, such suspensions are not viewed as disciplinary actions.³ Thus, while employees may challenge an investigative suspension through the management steps of the grievance procedure, such a challenge does not qualify for a hearing absent sufficient evidence of discrimination, retaliation or misapplication or unfair application of policy.⁴

¹ Virginia Code § 2.2-3004(B).

² Department of Human Resources Management (DHRM) Policy No. 1.60(VIII), the *Standards of Conduct*; Agency policy also permits suspension without pay pending the conclusion of a criminal investigation. DOC Procedure 5-10.22.

³ DHRM Policy No 1.60.

⁴ *Grievance Procedure Manual*, 4.1(c), p. 11.

While the grievant asserts that her suspension was “wrongful” she does not allege that discrimination or retaliation played any role in her suspension. Neither does she assert that the agency misapplied policy by suspending her. To the contrary, it appears that the agency’s actions are fully compliant with state and agency policy. The criminal investigation is ongoing; therefore the agency has no duty under state or agency policy to return her to work. Furthermore, the agency is permitted to continue the suspension until the criminal investigation is concluded.⁵ Accordingly, this grievance is not qualified for 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 Department’s 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 notifies the agency that she wishes to conclude the grievance.

Claudia T. Farr
Director

William G. Anderson, Jr.
EDR Consultant, Sr.

⁵ (DHRM) Policy No. 1.60(VIII); DOC Procedure 5-10.22.