

Issue: Qualification/Issues, grievant discharged for continued unapproved absences;
Ruling Date: December 29, 2003; Ruling #2003-465; Agency: Department of
Corections; Outcome: qualified



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Corrections/ No. 2003-465
December 29, 2003

The grievant has requested a ruling on whether her June 24, 2003 grievance with the Department of Corrections (“agency”) qualifies for a hearing. The grievant was discharged for continued unapproved absences.¹ For the reasons discussed below, this grievance qualifies for hearing.

FACTS

The Department of Corrections employed the grievant as a Correctional Officer. On May 14, 2003, the Senior Warden wrote the grievant stating that because of her continued unexcused absences, her employment was recommended for termination, effective May 21, 2003. On May 23, 2003, the Assistant Warden wrote the grievant to inform her that because she “did not present any viable reason to alter the disciplinary action outlined in the [the Senior Warden’s] May 14, 2003 letter,” and due to her continued unapproved absences, the grievant would be discharged effective May 24, 2003.

DISCUSSION

By statute and under the grievance procedure, management is reserved the exclusive right to manage the affairs and operations of state government.² Thus, claims relating to issues such as the methods, means and personnel by which work activities are to be carried out generally do not qualify for a hearing, unless the grievant presents evidence raising a sufficient question as to whether discrimination, retaliation, or discipline may have influenced management’s decision, or whether state policy may have been misapplied.³

In this case, the grievant essentially claims that her termination constituted unwarranted informal discipline.

Unwarranted Disciplinary Termination

¹ Correspondence to grievant from Senior Warden, dated May 14, 2003.

² See Va. Code § 2.2-3004(B).

³ Va. Code §2.2-3004(A) and (C); Grievance Procedure Manual § 4.1 (c), page 11.

For state employees subject to the Virginia Personnel Act, a termination of employment, if involuntary, must be based on objective methods and must adhere to all applicable statutes and to the policies and procedures promulgated by the Department of Human Resource Management (DHRM).⁴ Applicable statutes and policies recognize management's authority to terminate an employee for disciplinary and performance purposes as well as to meet other legitimate operational needs of the agency.⁵

For example, when an employee is terminated for disciplinary reasons, certain policy provisions must be followed.⁶ All terminations accompanied by a Written Notice automatically qualify for a hearing if challenged through the grievance procedure.⁷ In the absence of an accompanying Written Notice, a challenged termination qualifies for a hearing only if there is a sufficient question as to whether management's primary motivating factor was to punish behavior, or to establish the professional or personal standards for the conduct of an employee.⁸ A hearing cannot be avoided for the sole reason that a Written Notice did not accompany the termination, where there is a sufficient question as to whether the termination was in effect disciplinary in nature, i.e., taken primarily to punish perceived poor performance.⁹

In this case, the evidence raises a sufficient question as to whether the grievant's termination was, at least in part, disciplinary in nature. The Assistant Warden's May 23rd letter states that "[o]n May 14, 2003, [the Senior Warden] sent you a letter concerning *disciplinary action* for your continued unapproved absences."¹⁰ The Assistant Warden concluded by stating that because the grievant "did not present any viable reason to alter the disciplinary action outlined in the [the Senior Warden's] May 14, 2003 letter," and in light of continued unapproved absences, the grievant would be terminated effective May 24, 2003. Based on the agency's own characterization of the grievant's termination, it appears that the grievant's May 24th termination was, in part or in whole, disciplinary. Accordingly, the grievance is qualified for hearing for a determination of whether the termination was primarily disciplinary in nature, and if so, whether the discipline was warranted.

⁴ Va. Code § 2.2-2900, *et seq.*

⁵ Va. Code §§ 2.2-3004 (A) and (C); DHRM Policy No. 1.60, Standards of Conduct.

⁶ DHRM Policy No. 1.60, Standards of Conduct (VII).

⁷ Va. Code § 2.2-3004 (A); DHRM Policy No. 1.60, Standards of Conduct (IX); *Grievance Procedure Manual* § 4.1(a), page 10.

⁸ Va. Code §§ 2.2-3004 (A) and (C); *Grievance Procedure Manual* § 4.1 (b)(5) and (c)(4), pages 10-11 (a claim of disciplinary transfer, assignment, demotion, suspension, termination, or other action similarly affecting the employment status of an employee may qualify for a hearing if there are sufficient supporting facts).

⁹ Likewise, the policy and procedural safeguards in DHRM's Policy No. 1.40, Performance Planning and Evaluation, are designed to ensure that an involuntary performance-based transfer, demotion or termination are rationally based, and are not discriminatory, retaliatory, arbitrary or capricious. See DHRM Policy No. 1.40.

¹⁰ Correspondence to grievant from Assistant Warden, dated May 23, 2003, emphasis added.

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ADDITIONAL INFORMATION

For the reasons discussed above, this Department qualifies the June 24, 2003 grievance for a hearing. This qualification ruling in no way determines that the agency's decision to discharge the grievant was disciplinary, unwarranted, or otherwise improper, only that further exploration of the facts by a hearing officer is appropriate.

For further information, please refer to the enclosed sheet.

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Director

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