

Issue: Qualification/grievant claims that management misapplied or ufairly applied policy when it failed to honor his approved leave and placed him on "LWOP"; Ruling Date: March 11, 2004; Ruling #2003-488; Agency: Department of Corrections;  
Outcome: not qualified



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

**QUALIFICATION RULING OF DIRECTOR**

In the matter of Department of Corrections  
Ruling Number 2003-488  
March 11, 2004

The grievant has requested a ruling on whether his October 1, 2003, grievance with the Department of Corrections (DOC) qualifies for a hearing. The grievant claims that management misapplied or unfairly applied policy when it failed to honor his approved leave for August 31, 2003 and placed him on "Leave Without Pay" (LWOP) status, thereby docking his pay. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

The grievant is employed as a Corrections Officer. In December 2002, facility security personnel were required to submit all annual leave requests for Calendar Year 2003. The grievant requested and was granted approval for the period August 29 to September 5, 2003. On or about August 20, 2003, the shift commander asked the grievant if he would be available to work any shift on the weekend dates of August 29, 30, or 31. The grievant responded that he would be able to work August 29 and August 30, but would be unable to work on August 31 due to an important scheduled commitment.

The grievant worked his regular shift on the previously scheduled leave days of August 29 and August 30, as he had agreed. On August 30, the shift commander informed him that he would also have to work his shift on August 31, 2003 as well. The grievant, however, did not report to work as directed. Accordingly, the facility placed the grievant on "leave without pay" and docked his pay for the 11.5 hours he would have normally worked. Management did not attempt to issue the grievant any discipline under the Standards of Conduct.<sup>1</sup>

DISCUSSION

By statute and under the grievance procedure, management reserves the exclusive right to manage the affairs and operations of state government.<sup>2</sup> Thus, all claims relating

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<sup>1</sup> See Department of Human Resource Management (DHRM) Policy 1.60.

<sup>2</sup> Va. Code § 2.2-3004(B).

to issues such as the means, methods, and personnel by which work activities are to be carried out, including the scheduling of employees, 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.<sup>3</sup> The grievant claims that the agency misapplied or unfairly applied policy by refusing to honor his previously approved leave and docking his pay for an absence on August 31, 2003.

For the grievant's 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. In this case, DOC's Leave Policy provides that in the event of an unanticipated absence, employees "shall notify the supervisor no later than one-half hour after the beginning of the normal work hours," and that "an employee who fails to so notify the supervisor may be considered absent without leave."<sup>4</sup> DHRM Policy provides that an employee who is absent without approval "will be considered absent without proper authorization" and will not be paid for the time away from work."<sup>5</sup>

It is undisputed that the grievant's absence was not unanticipated. Because the grievant had a scheduled prior commitment, and had originally been granted approved leave for August 31, 2003, he deliberately chose to ignore the final orders of his supervisor to report to work on that day. Therefore, the grievant was clearly absent without proper authorization and the agency merely followed policy by placing him in a LWOP status.

The grievant also asserts that those who have requested leave well in advance should be granted that leave. In this regard, he claims that two other officers on rest days should have been chosen to work before him. DOC policy, however, does not address this issue and thus apparently leaves the matter to management's discretion.<sup>6</sup> Further, under state policy, DOC has been granted complete discretion to establish work schedules for employees according to its perceived needs.<sup>7</sup> The grievant has provided no facts to show that management misapplied or unfairly applied either the DOC or DHRM leave policy. Accordingly, this grievance does not qualify for hearing.

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<sup>3</sup> Va. Code § 2.2-3004(A) and (C) ; *Grievance Procedure Manual* § 4.1(b) and (c) , pages 10-11.

<sup>4</sup> See DOC Procedure Number 5-12.10(D)(1) and (3).

<sup>5</sup> See DHRM Policy 4.30 III(E)(1) and (2).

<sup>6</sup> DOC management expressly agrees that those who have requested leave well in advance *should* be granted that leave if possible. (*See* second-step response.) In this case, management agreed to allow the grievant to swap shifts with another officer if the grievant could find someone willing to trade shifts, but barring that, management had determined that the agency's needs required the grievant to work on August 31.

<sup>7</sup> See DHRM Policy Number 1.25 (III) A.

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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