

Issue: Compliance/Adding new issues to grievance; Qualification/misapplication of policy; claims that agency involuntarily docked pay to collect a salary overpayment (Isabel); Ruling Date: July 30, 2004; Ruling #2004-731; Outcome: grievant out of compliance; issues not qualified.



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

**COMPLIANCE AND QUALIFICATION RULING OF DIRECTOR**

In the matter of Department of Transportation  
Ruling Number 2004-731  
July 30, 2004

The grievant has requested a ruling on whether his December 10, 2003 grievance with the Department of Transportation (VDOT) qualifies for a hearing. The grievant claims that the agency has misapplied or unfairly applied the state's policy on overpayments by involuntarily docking his pay to collect a salary overpayment. For the reasons discussed below, the grievance does not qualify for hearing.

PRELIMINARY COMPLIANCE ISSUE

*Adding New Issues*

During this Department's investigation of this matter, the grievant presented an additional issue that had not been included in his grievance as initiated: namely, that state policies had been misapplied, resulting in the miscalculation of his compensation for the period of September 17-20, 2003.<sup>1</sup> However, once a grievance has been put in writing and addressed by management, a grievant may not expand the grievance to raise new issues. Because the complaint of miscalculation of pay was not presented in the written grievance, the issue cannot be added to this grievance.<sup>2</sup>

QUALIFICATION DETERMINATION

FACTS

The grievant is employed as a Ferry Crewmember. On September 18 and 19, 2003, the agency was officially closed due to Hurricane Isabel. During this period, the grievant and several other members of his crew were on temporary assignment in Richmond taking care of ferries. On December 3, 2003, VDOT informed the grievant that as a result of an overtime audit, it had determined that in his October 16, 2003 paycheck, which included the overtime he worked during the office closing on September 18 and 19, he had received a gross salary

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<sup>1</sup> The grievant asserts that the agency misapplied DHRM policy 1.35, Emergency Closing; DHRM policy 3.10, Compensatory Leave, and DHRM policy 3.15, Overtime Leave, resulting in the miscalculation of his pay for the hours worked during the period September 17-20, 2003. It is also noted that the grievant discussed these issues in an undated (approximately February 2004) letter to the agency's Employment Relations Consultant.

<sup>2</sup> See the Grievance Procedure Manual, § 2.4, page 6.

overpayment of \$110.00. The agency asserts that the overpayment was due to administrative error. As a result of the overpayment, the agency informed the grievant that it intended to deduct the whole amount from his December 16, 2003 paycheck.

### DISCUSSION

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.

The applicable policy in this case is the Department of Accounts' Topic No. 50510, Unpaid Leaves of Absences and Overpayments. Under Topic 50510, agencies are required to take appropriate steps to collect overpayments. Employees should first be notified of the overpayment and given repayment options, to include full repayment by personal check or a mutually agreeable payroll docking schedule. If by payroll docking, repayment may not occur over a longer period than the period during which the overpayment occurred.

In the present case, the grievant acknowledges receipt of the overpayment amount cited by the agency for collection. Although he had no role in creating the overpayment situation, the policy provides the agency a single option: in the absence of full repayment, the overpayment amount must be collected over a period not to exceed the period over which the overpayment occurred. In this case, the agency complied with mandated policy by collecting the documented overpayment in a single pay period. The grievant has provided no evidence to support his assertion that policy was misapplied or applied unfairly in collecting the overpayment amount from his salary. Therefore, 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 notifies the agency that he wishes to conclude the grievance.

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Claudia T. Farr  
Director

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June M. Foy

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