

Issue: Qualification/Written Notice; Ruling Date: November 5, 2004; Ruling #2004-864; Agency: Department of Forestry; Outcome: qualified



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

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Forestry  
Ruling No. 2004-864  
November 5, 2004

The grievant has requested a ruling on whether his April 30, 2004 grievance with the Department of Forestry (DOF or the agency) qualifies for a hearing. For the reasons set forth below, this grievance qualifies to proceed to hearing.

FACTS

On April 2, 2004, the grievant received a Group I Written Notice for allegedly "providing misleading, inaccurate information" and falsifying "documented activities." In conjunction with this Written Notice, the grievant was advised that for the period from June 22, 2004, through December 31, 2004, he would not be allowed to commute in a state vehicle and was required to submit a daily record and weekly itinerary of his work activities. On April 30, 2004, he initiated a grievance challenging this disciplinary action and seeking removal of the Written Notice and "all related penalties."

After the grievant's request for relief was denied by the first-step respondent, the grievant advanced his grievance to the second management resolution step. The second-step respondent offered to reduce the Group I Written Notice to a counseling memorandum and remove all related penalties if the grievant would agree to conclude his grievance. This offer was reaffirmed by the third-step respondent, although the grievant was also advised that rescission of the Written Notice would not necessarily affect his loss of commuting privileges.

The grievant declined the agency's offer and asked that the grievance be qualified for hearing. The agency denied the grievant's request on the ground that he had been offered his requested relief. The grievant subsequently appealed the agency's denial of qualification to this Department. The grievant has confirmed to this Department that he understands the nature of the relief offered by the agency, that he does not wish to accept the agency's offer, and that he wants a hearing officer to determine whether the Group I Written Notice and accompanying penalties were appropriate.

DISCUSSION

By statute and under the grievance procedure, all formal disciplinary actions (i.e., Written Notices and those suspensions, demotions, transfers and assignments, and

dismissals resulting from formal discipline) automatically qualify for a hearing.<sup>1</sup> The grievant's rejection of an opportunity to have the formal discipline against him removed, in return for accepting a lesser penalty and concluding his grievance, does not affect this right to hearing. While we acknowledge the agency for its effort to resolve this grievance, and note that an agency may condition relief on a grievant's agreement to conclude his grievance, the grievant is nevertheless free to reject the agency's offer of partial relief and to choose instead to have a hearing officer decide whether the agency's actions were consistent with law and policy. Accordingly, the April 30, 2004 grievance is qualified for hearing.

### CONCLUSION

For information regarding the actions the grievant may take as a result of this ruling, please refer to the enclosed sheet. Additionally, please note that this qualification ruling is not a determination regarding the merits of the grievant's claims.

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Claudia T. Farr  
Director

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Gretchen M. White  
EDR Consultant

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<sup>1</sup> Va. Code § 2.2-3004 (A); *Grievance Procedure Manual* 4.1(a)-(c). For purposes of determining qualification for a hearing, agency actions are divided into three categories: Actions Which *Automatically* Qualify, Actions Which *May* Qualify, and Actions Which *Do Not* Qualify. Dismissals for unsatisfactory performance also automatically qualify for a hearing.