

Issue: Qualification/compensation-in-band adjustment; Ruling Date: August 9, 2005;
Ruling #2006-1090; Agency: Department of Social Services; Outcome: not qualified



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Social Services
Ruling Number 2006-1090
August 9, 2005

The grievant has requested a qualification ruling on whether his March 14, 2005 grievance with the Department of Social Services (DSS or agency) qualifies for hearing. The grievant alleges that the agency misapplied and/or unfairly policy by not compensating him at a level commensurate with his job duties. For the reasons discussed below, this grievance does not qualify for hearing.

FACTS

The grievant is currently employed by the agency as a Program Consultant. He states that in August 2001 he transferred into an "old Grade 13" position from an "old Grade 12" position, but he was not compensated for this change in job responsibility until January 25, 2005. On March 14, 2005, the grievant initiated a grievance challenging the agency's failure to pay him at a level commensurate with his responsibility and job duties during the period from August 2001 until January 25, 2005. As relief, he seeks back payment of five percent of his annual salary for this period. After the parties failed to resolve the grievance during the management resolution steps, the grievant requested that the agency head qualify the grievance for hearing. The grievant has appealed the agency head's denial of this request.

DISCUSSION

By statute and under the grievance procedure, management is reserved the exclusive right to manage the affairs and operations of state government.¹ Further, complaints relating solely to the establishment or revision of wages, salaries, position classifications, or general benefits "shall not proceed to hearing"² unless there is sufficient evidence of discrimination, retaliation, discipline, or a misapplication or unfair application of policy.

¹ Va. Code § 2.2-3004(B).

² Va. Code § 2.2-3004(C).

Even where sufficient evidence exists, however, there are some instances where qualification may be inappropriate based upon the circumstances of the case. For example, during the resolution steps, an issue may have become moot, either because the agency granted the specific relief requested by the grievant or an interim event prevents a hearing officer from being able to grant any meaningful relief. Additionally, qualification may be inappropriate where the hearing officer does not have the authority to grant the relief requested by the grievant and no other effectual relief is available.

In this case, it appears that there is no effectual relief that a hearing officer could order. Under the *Rules for Conducting Grievance Hearings*, a hearing officer is limited in awarding back pay in a non-disciplinary action to the 30 calendar day period immediately preceding the initiation of the grievance.³ Here, the grievant initiated his grievance on March 14, 2005, more than 30 days after January 25, 2005, the last day of the period for which he seeks back pay. As a result, even if the grievant were able to establish at hearing that a misapplication or unfair application of policy occurred, the hearing officer could not order any portion of the relief sought by the grievant. Because there is no effectual relief that a hearing officer could order in this grievance, the grievant's request for qualification of his grievance for hearing is denied.

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.

Claudia T. Farr
Director

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EDR Consultant

³ *Rules for Conducting Grievance Hearings* § VI (C)(1).