

Issue: Qualification/Separation from State/layoff/recall; Ruling Date: March 9, 2006; Ruling #2006-1223; Agency: Virginia Employment Commission; Outcome: not qualified



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

**QUALIFICATION RULING OF DIRECTOR**

In the matter of Virginia Employment Commission  
Ruling Number 2006-1223  
March 9, 2006

The grievant has requested a qualification ruling in his July 27, 2005 grievance initiated with the Virginia Employment Commission (VEC).<sup>1</sup> For the reasons discussed below, the grievance is not qualified for hearing.

**FACTS**

The parties agree that on April 11, 2005, while he was employed with the VEC as Director of Policy and Planning, his supervisor verbally informed him that he would be laid off, effective July 1, 2005. On April 13, 2005, the grievant received written confirmation that his position was being abolished effective July 1, 2005.

The grievant claims that VEC did not offer him a placement option, but with the "Interagency Placement Screening Form" (Yellow Form), he was able to secure a position with the Division of Motor Vehicles (DMV), albeit at a lower salary than he had earned at VEC. The start date for the DMV position was July 1, 2005, which was also the effective date of the grievant's layoff from VEC.

The grievant states that prior to his layoff, he discussed with VEC any layoff rights that he might have. He asserts that he was told that because he had accepted another position, he was not entitled to any layoff benefits. The grievant asserts that he should have been granted certain layoff rights under state policy, such as the "Preferential Hiring Card" (Blue Card).

**DISCUSSION**

For an allegation of misapplication 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 grievant essentially asserts that the agency misapplied or unfairly applied policy by denying him a "Blue Card."

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<sup>1</sup> On the Grievance Form A, the grievant identified the "agency name" as the "Division of Motor Vehicles." However, the grievant presented the Form A to VEC management after being instructed to do so by the Division of Motor Vehicles (DMV).

The applicable policy in this case is The Department of Human Resource Management (DHRM) Policy 1.30, Layoff. This policy states in relevant part that when employees are notified that they will be impacted by layoff, agencies must issue Interagency Placement Screening Forms (Yellow Form), and ensure that employees have access to the state vacancy listing.<sup>2</sup> These employees may use the Yellow Form to gain preferential consideration for valid vacancies in any Executive Branch agency from the date of issuance until they are placed on leave without pay-layoff.<sup>3</sup> The Yellow Form may be used to apply for announced positions that are in a pay band equal to or lower than the pay band of the employee's current position and for which they are minimally qualified.<sup>4</sup> Once an employee has accepted a position using the Yellow Form, it may not be used to obtain another position.<sup>5</sup> *If no placement options are available within the employee's agency or within other Executive Branch agencies*, the agency must provide the employee with a final layoff notice and a preferential hiring card (Blue Card).<sup>6</sup>

In this case, the grievant was issued a Yellow Card through which he obtained a position with another state agency in a lower pay band and at a lower salary. Blue Cards are essentially reserved for those who have not successfully used the Yellow Card to secure a position. Because the grievant was placed in another position prior to the effective date of his layoff, the grievant had no right to a Blue Card under state policy. Accordingly, this Department finds no reason to send this grievance to 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 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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William G. Anderson, Jr.  
EDR Consultant

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<sup>2</sup> DHRM Policy 1.30, Layoff, effective date 9/25/02; revised date 8/10/02, *Interagency Placement Screening Form*.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*, *Use by Employees*.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*, *Final Notice of Leave without Pay-Layoff*, (emphasis added).