

Issue: Qualification/benefits/leave/compensatory leave; Ruling Date: May 3, 2006;  
Ruling #2006-1281; 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 2006-1281  
May 3, 2006

The grievant has requested a ruling on whether his December 19, 2005 grievance with the Department of Corrections (DOC or the agency) qualifies for hearing. The grievant claims that the agency misapplied and/or unfairly applied policy by not granting him compensatory leave for a day that he worked after the facility had been placed on a “liberal leave” status because of severe weather conditions. For the reasons set forth below, this grievance is not qualified.

FACTS

The grievant is employed as an Electrician Supervisor. On December 9, 2005, the facility where the grievant works was placed in a “liberal leave” status due to inclement weather. The grievant’s position is considered a designated position, which requires him to come into work even on days when the facility is officially closed. Thus, as he was required, the grievant worked on December 9<sup>th</sup> and now seeks compensatory leave for having worked that day.

DISCUSSION

*Qualification*

The grievance statute and procedure reserve to management the exclusive right to manage the affairs and operations of state government.<sup>1</sup> Thus, claims relating to issues such as the means, methods, and personnel by which work activities are to be carried out or scheduling of employees within the agency, 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 and/or agency policy may have been misapplied and/or unfairly applied.<sup>2</sup> In this case, the grievant asserts that the agency misapplied policy by not granting him compensatory leave for working on December 9, 2005, when the facility was operating on a “liberal leave” schedule.

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<sup>1</sup> See Va. Code § 2.2-3004(B).

<sup>2</sup> Va. Code § 2.2-3004(A) and (C); *Grievance Procedure Manual* § 4.1(b) and (c).

### Misapplication of Policy

For a misapplication of policy claim to qualify for a hearing, there must be evidence raising a sufficient question as to whether management violated a mandatory policy provision. Applicable policies in this case are the Department of Human Resources Management (DHRM) Policy 1.35, Emergency Closings; DOC Procedure Number 5-36, Emergency Closings; Facility Internal Operating Procedures Nos. 204 and 207.

The grievant does not dispute that his position of Electrician Supervisor is considered a “designated position,” which means that the agency has designated him as a “person needed to operate [the] facility regardless of unusual weather or other conditions.”<sup>3</sup> During authorized closings, designated employees are paid their regular rate of pay for hours worked and also are granted compensatory time for hours worked.<sup>4</sup> On the other hand, when the agency designates an inclement weather day as a “liberal leave” day,<sup>5</sup> designated employees are still required to work but do not receive compensatory leave.

The crux of this grievance is the grievant’s disagreement with the agency’s decision to call December 9<sup>th</sup> a “liberal leave” day as opposed to an “authorized closing” day. Because the agency designated December 9<sup>th</sup> as a “liberal leave” day, the grievant was not entitled under policy to compensatory leave for the time that he worked. Had the facility closed, he would have received leave. The determination of whether to call a day a “liberal leave” day or an “official closing” day is left solely to the discretion of agency management. Accordingly, this Department finds no basis to qualify this grievance.<sup>6</sup>

### APPEAL RIGHTS, AND OTHER INFORMATION

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<sup>3</sup> IOP 207, p. 1. *See also*, DOC Procedure 5-36.5 which states that designated employees are “required to work during authorized closings.” DHRM Policy 1.35 describes designated employees as individuals who “are required to work during an authorized closing because their positions have been designated by their agencies as essential to agency operations during emergencies.”

<sup>4</sup> DHRM Policy 1.35, *Designated Employees*. During an authorized closing, non-designated employees are paid for the hours they were scheduled to work.

<sup>5</sup> A “liberal leave” day is designated when the agency determines that “conditions are severe enough to declare an inclement weather closing, but allows non-designated employees who believe they should not travel to work because of conditions, to call in and utilize their annual compensatory leave balances or leave without pay.” DOC Procedure Number 5-36.7 (D). While DHRM Policy 1.35 does not expressly state that designated employees may not receive compensatory leave when they work on a liberal leave day, a DHRM policy analyst confirmed that compensatory leave is not available under such circumstances.

<sup>6</sup> We note that the grievant has not pointed to evidence that might support an unfair application of policy claim such as a similarly situated (designated) employee who was granted compensatory leave for December 9<sup>th</sup>.

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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