

Issues: Qualification: Discipline – Suspension/Demotion/Transfer, Management Actions – Transfer (non-disciplinary), Retaliation – Complying with any law; Ruling Date: May 4, 2007; Ruling #2007-1593; Agency: Department of Conservation and Recreation; Outcome: All issues qualified.



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

**QUALIFICATION RULING OF DIRECTOR**

In the matter of Department of Conservation and Recreation  
Ruling Number 2007-1593  
May 4, 2007

The grievant has requested a ruling on whether his October 19, 2006 grievance with the Department of Conservation and Recreation (DCR or the agency) qualifies for a hearing. For the reasons discussed below, this grievance qualifies for hearing.

**FACTS**

The grievant was formerly employed as the Chief Ranger at an agency park. By letter dated September 22, 2006, the grievant was advised that he was being reassigned to a new Park Ranger position at the same park. Although the agency states that the grievant's salary was not affected by the reassignment, the reassignment made him no longer eligible for agency-provided housing and he was given until January 9, 2007 to find private housing. In addition, the Park Ranger position is considered by the agency to be non-exempt under the Fair Labor Standards Act (FLSA), in contrast to the apparently exempt Chief Ranger position. The agency asserts that the reassignment was not a demotion, but rather a lateral transfer initiated due to the grievant's ongoing concerns about his workload as a Chief Ranger.

On October 19, 2006, the grievant initiated a grievance challenging his reassignment. He asserts that the agency's action was in fact a demotion, taken in retaliation for his having expressed concerns about work load and staffing, as well as because it mistakenly believed he was "instigating an incident regarding public concern over bird habitats." He also alleges that the agency has failed to apply (or unfairly applied) personnel policies and procedures and discriminated against him on the basis of his age and marital status.<sup>1</sup>

---

<sup>1</sup> The management action challenged by this grievance is the grievant's reassignment. While the grievant's claims of misapplication of policy and discrimination were not expressly stated on the Form A as initiated, the management action being grieved (the reassignment) was. For that reason, the grievant's theories as to *why* that management action was improper will be addressed in this ruling. See EDR Ruling No. 2007-1444. However, to the extent the grievant seeks to raise claims regarding other management actions (such as his 2005 performance evaluation), such actions were not identified as issues being grieved on the Form

After the parties failed to resolve the grievance during the management resolution steps, the grievant asked the agency head to qualify his grievance for hearing. The agency head denied the grievant's request, and the grievant has appealed to this Department.

### DISCUSSION

#### *Misapplication of Policy*

For state employees subject to the Virginia Personnel Act, a demotion must be based on objective methods and adhere to all applicable statutes and the policies and procedures promulgated by the Department of Human Resource Management (DHRM).<sup>2</sup> State policies recognize management's authority to demote an employee involuntarily for disciplinary and performance purposes.<sup>3</sup> However, when an employee is demoted as a disciplinary measure, the Standards of Conduct require the issuance of a Written Notice.<sup>4</sup> Similarly, Policy 1.40 mandates that specific procedures be followed before a demotion based on performance can be executed. Specifically, Policy 1.40 defines "Performance Demotion" as an "[a]ction taken to an employee who received an overall performance evaluation of 'Below Contributor' and whose performance during the re-evaluation period has not improved."<sup>5</sup>

In this case, the grievant has presented evidence that raises a sufficient question as to whether his reassignment was in fact a demotion, rather than merely a lateral transfer. In particular, the evidence suggests that as a result of the reassignment, the grievant's status under the FLSA changed from exempt to non-exempt; he lost his title and status as "Chief" Ranger and is now apparently supervised by someone with that title; and he is no longer eligible for agency-provided housing. Moreover, the September 22, 2006 letter advising the grievant of his reassignment does not describe the agency's action as occurring in conjunction with the issuance of a Written Notice or through application of Policy 1.40: to the contrary, that letter characterizes the reassignment as a "lateral[] transfer." In light of this evidence, we conclude that this grievance raises a sufficient question as to whether the agency misapplied policy to qualify for hearing.

---

A and therefore will not be considered in this ruling. *See Grievance Procedure Manual* § 2.4 ("Once the grievance is initiated, additional claims may not be added.")

<sup>2</sup> Va. Code § 2.2-2900 *et seq.*

<sup>3</sup> Va. Code §§ 2.2-3004 (A) and (C); DHRM Policy No. 3.05, "Compensation" (effective date 9/25/00, as revised 4/25/05); DHRM Policy 1.40, "Performance Planning and Evaluation" (effective date 9/25/00, as revised 8/01/01); and DHRM Policy 1.60, "Standards of Conduct" (effective date 9/16/93). In addition, an employee may be demoted in lieu of layoff. *See* DHRM Policy No. 1.30 (effective date 9/25/00, as revised 5/16/06).

<sup>4</sup> DHRM Policy 1.60(VII)(E)(5). This section, discussing procedures related to disciplinary suspensions, demotions, transfers, and terminations states that "a Written Notice form . . . shall be provided." (emphasis added).

<sup>5</sup> DHRM Policy 1.40, page 2 of 16.

*Alternative Theories*

The grievant also asserts that the reassignment was motivated by retaliation and discrimination. Because the grievant's claim of misapplication of policy qualifies for hearing, this Department deems it appropriate to send all alternative theories raised by the October 19, 2006 grievance for adjudication by a hearing officer to help assure a full exploration of what could be interrelated facts and issues.

CONCLUSION

For the reasons discussed above, this Department qualifies the grievant's October 19, 2006 grievance for a hearing. Within five workdays of receipt of this ruling, the agency shall request the appointment of a hearing officer using the Grievance Form B. We note that this qualification ruling in no way determines that the agency's decision to reassign the grievant was a misapplication of policy or otherwise improper, but rather only that further exploration of the facts by a hearing officer is appropriate.

---

Claudia T. Farr  
Director