

Issue: Qualification: Compensation – Temporary/Acting Pay; Ruling Date: June 22, 2007; Ruling #2007-1675; Agency: Department of State Police; Outcome: Not Qualified.



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

**QUALIFICATION RULING OF DIRECTOR**

In the matter of Department of State Police  
Ruling Number 2007-1675  
June 22, 2007

The grievant has requested a qualification ruling on whether his March 19, 2007 grievance with the Department of State Police (the agency) qualifies for hearing. The grievant alleges that the agency misapplied and/or unfairly applied 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 a Sergeant with the agency. From October 25, 2005 through June 10, 2006, he states that he performed the duties of the Acting First Sergeant in his division. The grievant sought back pay in the form of temporary pay from the agency, but this request was denied. Thereafter, the grievant initiated this grievance on March 19, 2007. The grievance proceeded through the management steps, which afforded the grievant no relief. After the agency head denied qualification for a hearing, the grievant now appeals that decision to this Department.

DISCUSSION

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

Even if sufficient evidence exists, however, there are some instances when 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

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<sup>1</sup> Va. Code § 2.2-3004(B).

<sup>2</sup> Va. Code § 2.2-3004(C).

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 when 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.<sup>3</sup> Here, the grievant initiated his grievance on March 19, 2007, more than 30 days after June 10, 2006, 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.

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Claudia T. Farr  
Director

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<sup>3</sup> *Rules for Conducting Grievance Hearings* § VI(C)(1).