

Issue: Qualification/Compensation/other; Ruling Date: October 4, 2006; Ruling #2007-1397; Agency: Department of State Police; Outcome: not qualified



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution
QUALIFICATION RULING OF THE DIRECTOR
In the matter of Department of State Police
No. 2007-1397
October 4, 2006

The grievant has requested a ruling on whether his June 5, 2006 grievance with the Department of State Police (or agency) qualifies for a hearing. The grievant claims that the agency has misapplied or unfairly applied the state's policy on overpayments by involuntarily docking his pay to collect a salary overpayment. For the reasons discussed below, the grievance does not qualify for hearing.

FACTS

The grievant is employed by the agency as a Senior Trooper. He was ordered to active duty with the U.S. Air Force. The agency miscalculated the military supplement that it paid the grievant while he was deployed. The grievant informed the agency that he thought that the supplement was in excess of what he should have been paid, but he was purportedly assured that the amount was correct. Apparently, the amount was indeed incorrect and excessive. Accordingly, the grievant was informed that his paycheck would be docked until the overpayment was repaid. The agency sought and received an exception from the Department of Accounts (DOA) and the Department of Human Resource Management (DHRM) for an extension of the repayment, "not to exceed 2 ½ times the initially received allotted payments." In addition, the agency has agreed to allow the grievant, after six months, to use his accrued leave balance to decrease the total overpayment amount. The grievant asserts that he will nevertheless be harmed by the extended repayment plan.

DISCUSSION

For an allegation of misapplication of policy or unfair application 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 applicable policy in this case is the Department of Accounts' Topic No. 50510, Unpaid Leaves of Absences and Overpayments. Under Topic 50510, agencies are required to take appropriate steps to collect overpayments. Employees should first be notified of the overpayment and given repayment options, to include full repayment by personal check or a mutually agreeable payroll docking schedule.¹ If by payroll docking,

¹ Topic 50510, p. 5.

repayment normally may not occur over a longer period than the period during which the overpayment occurred.²

In the present case, the grievant apparently acknowledges receipt of the overpayment amount cited by the agency for collection. Although he had no role in creating the overpayment situation, the policy provides the agency a single option: in the absence of full repayment, the overpayment amount must be collected over a period not to exceed the period over which the overpayment occurred. Despite the apparent lack of options, the agency sought and was granted an exception to the normal repayment schedule which requires an employee to repay the overpayment in an amount of time that does not exceed the period of time that the overpayments occurred. The grievant was offered the opportunity to repay the overpayment not to exceed 2 ½ times the amount of time over which the overpayment occurred. In addition, the agency has agreed to allow the grievant, after six months, to use his accrued leave balance to decrease the total overpayment amount. Thus, based on the totality of the circumstances, the grievant has provided no evidence to support his assertion that policy was misapplied or applied unfairly in collecting the overpayment amount from his salary. Therefore, this grievance does not qualify for a 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 this 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 notifies the agency that he wishes to conclude the grievance.

Claudia T. Farr
Director

² Id.