

Issue: Qualification/Compensation-other; Ruling Date: November 17, 2006; Ruling #2007-1460; Agency: Virginia School for the Deaf and Blind; Outcome: not qualified



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

**QUALIFICATION RULING OF DIRECTOR**

In the matter of the Virginia School for the Deaf and Blind  
No. 2007-1460  
November 17, 2006

The grievant has requested a ruling on whether his August 31, 2006 grievance with the Virginia School for the Deaf and the Blind (the agency) qualifies for a hearing. The grievant essentially claims that the agency has misapplied or unfairly applied state policy by failing to reimburse him for his damaged eye glasses which he asserts were broken by students while on an official school outing. For the reasons discussed below, this grievance does not qualify for a hearing.

**FACTS**

The grievant serves as an agency Recreation Coordinator. On August 29, 2006, the grievant accompanied the student body to a park pool. He asserts that he removed his eyeglasses and placed them in his backpack, which he then placed "beside a bench that was near the pool."<sup>1</sup> The grievant asserts that he then entered the pool. Approximately one hour later, a co-worker approached the grievant with a pair of badly damaged glasses which turned out to be the grievant's. The grievant presumes that a student damaged his glasses.

The grievant asked the agency to reimburse him for the cost of his broken glasses but the agency has declined stating, among other things, that policy does not allow for such repayments.

**DISCUSSION**

By statute and under the grievance procedure, complaints relating solely to the establishment and revision of salaries and position classifications "shall not proceed to hearing"<sup>2</sup> unless there is sufficient evidence of discrimination, retaliation, unwarranted discipline, or a misapplication or unfair application of policy. In this case, the grievant essentially claims that the agency has misapplied or unfairly applied policy by not reimbursing him for his broken glasses.

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<sup>1</sup> The agency asserts that other staff members observed the grievant's glasses on top of his flip flops which were sitting on his back pack.

<sup>2</sup> Va. Code § 2.2-3004(C).

For the grievant's claim to qualify for a hearing, there must be evidence raising a sufficient question as to whether management violated a mandatory policy or whether the challenged action, in its totality, is so unfair as to amount to a disregard of the intent of the applicable policy. The applicable policy arises from the Office of the Comptroller and is designated as Topic Number 20310. This policy directs that all "[a]gency purchases must be considered essential to the operation of the agency and in support of the agency's mission to justify use of State funds."<sup>3</sup> Topic 20310 provides a non-exclusive list of expenditures that are considered inappropriate for reimbursement. For example, reimbursement is not allowed for personal articles that are lost or stolen. Likewise prohibited is reimbursement for repairs or replacement of non-uniform clothing damaged in the workplace. Eye glasses left beside a bench that are subsequently broken by an unidentified person or persons appear similar in nature to the items listed above that are expressly not subject to reimbursement. Accordingly, under the facts of this case, we cannot conclude that the agency misapplied or unfairly applied policy.<sup>4</sup>

#### 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 university will request the appointment of a hearing officer unless the grievant wishes to conclude the grievance and notifies the university of that desire.

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Claudia T. Farr  
Director

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<sup>3</sup> Topic 20310, *Improper Expenditures*, p. 12

<sup>4</sup> The grievant asserts that years ago the agency reimbursed him for a pair of eye glasses broken when he was struck in the face by a basketball as he played ball with students. To the extent that the agency provided reimbursement under those particular circumstances, the instant facts appear to be distinguishable. First, in the earlier case, the damage to his glasses appears to have been undeniably linked to direct interaction with students. In the instant case, it is not clear that student interaction was linked to the damage to his glasses. Furthermore, in the instant case, there remains a question as to whether the grievant used appropriate care in placing his glasses out of harm's way. By his own admission, the grievant placed his glasses on the ground next to a bench. Such placement, even if the glasses were inside of his backpack as the grievant claims, left the glasses potentially prone to damage. In the earlier case, there appears no such issue of potential negligence.

The grievant also asserts that other facilities in other agencies have reimbursement policies that would allow for the reimbursement of broken glasses. Assuming the grievant is correct, under the particular facts of this case, it is far from evident that the grievant's glasses would or could be replaced under any agency policy. Moreover, the actions of one agency do not dictate the actions of another.