

Issue: Qualification – Benefits/Leave (Educational Leave); Ruling Date: May 18, 2009; Ruling #2009-2297; 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 No. 2009-2297  
May 18, 2009

The grievant has requested a ruling on whether his January 29, 2009 grievance with the Department of Corrections (the agency) qualifies for a hearing. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

The grievant requested that the agency allow him to utilize Education Leave to take E.M.T. classes provided by a local fire department. The grievant states an agency manager initially gave him approval to use such leave, but when human resources reviewed the request, it was denied. The agency denied the grievant's request because the E.M.T. classes did not sufficiently relate to the development of the grievant's job duties. The agency also indicated that the request could not be granted because the classes the grievant sought to take were not through an accredited college or other institution.

The grievant argues that the agency has misapplied policy in that other agency employees were approved in the past to use leave for similar courses. For instance, the grievant states that one employee took classes related to X-Ray technology and was allowed to use Education Leave. The grievant also says that one employee was permitted to take E.M.T. classes in the past, and another was allowed to use Community Service leave as recently as December 2008 for such classes. The grievant further alleges that the E.M.T. classes, though provided at a local fire department, were similar to those taught at a local community college and by the same instructor of his courses.

DISCUSSION

By statute and under the grievance procedure, management reserves 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 a hearing."<sup>2</sup> Accordingly, challenges to such decisions do not qualify for a hearing unless the grievant presents evidence raising a sufficient question as to whether the agency misapplied or unfairly applied policy, or

---

<sup>1</sup> Va. Code § 2.2-3004(B).

<sup>2</sup> Va. Code § 2.2-3004(C).

discrimination, retaliation or discipline improperly influenced the decision.<sup>3</sup> In this case, the grievant claims that the agency misapplied or unfairly applied policy.

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. Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve “adverse employment actions.”<sup>4</sup> Thus, typically, a threshold question is whether the grievant has suffered an adverse employment action.<sup>5</sup> An adverse employment action is defined as a “tangible employment action constitut[ing] a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.”<sup>6</sup> Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one’s employment.<sup>7</sup> Because this case involves the denial of a leave benefit, it will be assumed, for purposes of this ruling only, that the grievant experienced an adverse employment action. Nevertheless, because the evidence does not raise a sufficient question that the agency misapplied or unfairly applied policy, this grievance does not qualify for hearing.

DHRM Policy 4.15 provides: “[e]ducational leave may be granted, at the discretion of the agency, for the purpose of allowing employees time to further their education through study related to their work or that of their agencies.”<sup>8</sup> Because this policy specifically provides discretion to the agency in granting requests for educational leave, the grievance procedure accords much deference to management’s exercise of judgment in this area. Thus, qualification is warranted only where evidence presented by the grievant raises a sufficient question as to whether the agency’s determination was plainly inconsistent with other similar decisions within the agency or otherwise arbitrary or capricious.<sup>9</sup> Arbitrary or capricious is defined as a decision made “[i]n disregard of the facts or without a reasoned basis.”<sup>10</sup>

The grievant’s argument that the E.M.T. training would enhance his skills, and that it sufficiently related to his work for the agency is understandable. The evidence he

---

<sup>3</sup> Va. Code § 2.2-3004(A); *Grievance Procedure Manual* § 4.1.

<sup>4</sup> *See Grievance Procedure Manual* § 4.1(b).

<sup>5</sup> While evidence suggesting that the grievant suffered an “adverse employment action” is generally required in order for a grievance to advance to hearing, certain grievances may proceed to hearing absent evidence of an “adverse employment action.” For example, consistent with recent developments in Title VII law, this Department substitutes a lessened “materially adverse” standard for the “adverse employment action” standard in retaliation grievances. *See* EDR Ruling No. 2007-1538.

<sup>6</sup> *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

<sup>7</sup> *See, e.g., Holland v. Washington Homes, Inc.*, 487 F.3d 208, 219 (4<sup>th</sup> Cir. 2007).

<sup>8</sup> Further, the agency’s policy on educational leave defines such leave as “job-related.” DOC Op. Proc. 160.3 § III.

<sup>9</sup> *See, e.g.,* EDR Ruling 2008-1879; EDR Ruling No. 2007-1651.

<sup>10</sup> *Grievance Procedure Manual* § 9.

submitted, however, does not indicate that the agency's contrary determination was inconsistent with other agency decisions or otherwise arbitrary or capricious. Allowing another employee to take an X-ray technology course is distinguishable as it was intended to enhance the skills of the employee to encourage potential future employment with the agency in another position. The agency has determined that such a relationship did not exist for the E.M.T. training. There is no basis to dispute the agency's assessment.

Further, to the extent the grievant argues that other employees have been allowed to use leave for E.M.T. training, there is insufficient evidence to support this contention. The agency searched its records for the past four years and found no indication that educational or community service leave had been approved for this purpose. With no evidence to dispute this information, the grievance does not raise a sufficient question that the grievant's leave request was treated inconsistently with other recent similar decisions by the agency or was otherwise arbitrary or capricious.

The agency also relies on the fact that the E.M.T. training was not provided by an accredited college or other institution, allegedly a requirement of the agency's policy to receive approval. We note that while DOC Operating Procedure 160.3 does link coursework through an accredited college or other institution for funding for *educational assistance*, there does not appear to be such an explicit requirement for educational leave.<sup>11</sup> This ruling, however, need not decide that issue. In the agency's determination, the E.M.T. training was not sufficiently related to the grievant's work, which is a proper basis under the policy to decline a request for educational leave. Because the grievance does not raise a sufficient question that policy was misapplied or unfairly applied, the 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 and file a notice of appeal pursuant to the provisions of Va. Code § 2.2-3004(E). 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 does not wish to proceed.

---

Claudia T. Farr  
Director

---

<sup>11</sup> See DOC Op. Proc. 160.3 § III (comparing definitions of "Educational Assistance" and "Educational Leave"). On the other hand, requiring all educational leave to be for college courses only would not seem to be inconsistent with DHRM Policy 4.15, if the requirement was applied consistently.