

Issue: Qualification – Miscellaneous (Other Issue); Ruling Date: June 3, 2009;
Ruling #2009-2318; Agency: Virginia Department of Transportation; Outcome:
Not Qualified.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of the Department of Transportation
Ruling No. 2009-2318
June 3, 2009

The grievant has requested qualification of his March 30, 2009 grievance with the Department of Transportation (the agency) regarding the agency's requirement that employees access pay information solely through Payline. For the reasons set forth below, the grievance does not qualify for hearing.

FACTS

Beginning in March 2009, the agency required all its employees to utilize Payline to access pay information instead of providing paper pay stubs. The grievant initiated this grievance on or around March 30, 2009 to challenge this decision due to concerns about internet security and privacy of his personal information. The grievant also raises issues regarding employees who may not have access to the internet.¹ A review of the grievance record indicates that no step-respondent provided a substantive response to the grievant's concerns. The grievant now seeks to continue the grievance process and requests qualification of the grievance for hearing.

DISCUSSION

Although state employees with access to the grievance procedure may generally grieve anything related to their employment, only certain grievances qualify for a hearing.² The actions raised in this grievance do not appear to fall into any of the types of cases that can qualify for hearing under the grievance procedure.³ Indeed, this case is best described as a challenge to the content of an agency rule or procedure. While a grievant is entitled to pursue such a grievance through the management steps, it is not the type of case that can be qualified for a grievance hearing.⁴ Therefore, this grievance does not qualify for a hearing.

¹ The Grievance Form A does not state that the grievant himself lacks access to the internet to use Payline.

² See *Grievance Procedure Manual* § 4.1 (a) and (b).

³ *Id.*

⁴ See *Grievance Procedure Manual* § 4.1(c).

This Department recognizes the grievant's frustration with the responses he has received to the concerns raised in his grievance. At each management resolution step, the step-respondent indicated that he or she could not address the matter because the grievance concerned an agency head level decision. While this is likely true, step-respondents avoided addressing the issues raised in this grievance.⁵ Such a failure to respond might be considered noncompliance under the grievance procedure.⁶ However, this ruling is not before this Department as a compliance ruling. Moreover, at this stage in the grievance process, the grievant has waived the opportunity to challenge management resolution step responses.⁷

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.

Claudia T. Farr
Director

⁵ At the qualification stage, the agency head's designee did provide a brief note that the "decision for all VDOT employees to use Payline, is part of a mandate from the Department of Accounts (DOA)." The designee's note, however, does not address the grievant's concern that employees without internet access cannot use Payline, nor his concern that there are no alternative access options, such as phone access, to pay stub information.

⁶ See, e.g., *Grievance Procedure Manual* §§ 3.1-3.3 (requiring step-respondents to address the issues and relief requested); see also EDR Ruling Nos. 2009-2200, 2009-2201.

⁷ See *Grievance Procedure Manual* § 6.3 ("All claims of noncompliance should be raised immediately. By proceeding with the grievance after becoming aware of a procedural violation, one may forfeit the right to challenge the noncompliance at a later time.")