

Issue: Qualification – Benefits/Leave (VSDP); Ruling Date: July 27, 2009;  
Ruling #2009-2334; Agency: Virginia Department of Health; Outcome: Not  
Qualified.



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

**QUALIFICATION RULING OF DIRECTOR**

In the matter of Department of Health  
Ruling Number 2009-2334  
July 27, 2009

The grievant has requested a qualification ruling on whether her March 9, 2009 grievance with the Virginia Department of Health (VDH or the agency) qualifies for hearing. The grievant alleges that the agency misapplied and/or unfairly applied policy by not allowing her to continue in Long-Term Disability-Working (LTD-W) status. For the reasons discussed below, this grievance does not qualify for hearing.

FACTS

The grievant is a nutritionist with the agency. She indicates that since 1999, she has intermittently taken LTD-W because of an ongoing medical condition. By letter dated February 18, 2009, the grievant was advised that LTD-W was limited to a 90-day period and that she would be required to return to full-time work by April 5, 2009. The grievant initiated a grievance challenging this action on March 9, 2009. On April 13, 2009, while the grievance was pending, the grievant returned to full-duty status.

The grievance has proceeded through the management steps. After the agency head denied qualification for a hearing, the grievant appealed 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.

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<sup>1</sup> Va. Code § 2.2-3004(B).

<sup>2</sup> Va. Code § 2.2-3004(C).

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 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. The grievant voluntarily elected to end her LTD-W status, and as a consequence, the issue of whether the grievant should have been allowed to continue in that status indefinitely is moot. While we recognize that this issue may arise again should the grievant return to LTD-W status, a hearing officer is not able to determine in advance any issues involving a new period of disability. Rather, those issues can only be addressed under the particular circumstances of that period of leave and/or disability. 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 her grievance for hearing is denied.<sup>3</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 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> In addition, this grievance appears to challenge the contents of the agency's January 16, 2009 VSDP Return to Work Policy. Claims that solely challenge the contents of policy are not qualified for hearing. *See GPM § 4.1(c)*. (However, a challenge to an Agency policy which asserts that the Agency policy conflicts with state policy would be qualified, if supported by the evidence.) *Id.*