

Issue: Qualification – Miscellaneous (other issue); Ruling Date: September 15, 2009; Ruling #2010-2407; Agency: Department of Conservation and Recreation; Outcome: Not Qualified.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of the Department of Conservation and Recreation
Ruling No. 2010-2407
September 15, 2009

The grievant has requested qualification of his May 6, 2009 grievance with the Department of Conservation and Recreation (the agency) regarding the agency's policy that prohibits employees from running for certain elected offices. For the reasons set forth below, the grievance does not qualify for hearing.

FACTS

In May 2009, the agency enacted a policy that prohibits employees in the grievant's position from running for "any elective office which is charged with the duty of investigating, arresting, or prosecuting violators of the criminal laws of the Commonwealth or any political subdivision thereof, or with any other law enforcement duties." The grievant initiated his May 6, 2009 grievance to challenge this policy as unfair and unlawful. The agency notes that the Office of the Attorney General has reviewed the policy and that the Department of State Police has enacted a similar policy. As the grievant received no relief during the management steps, he now seeks qualification of his 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.¹ 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.² 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.³ Therefore, this grievance does not qualify for a hearing.⁴

¹ See *Grievance Procedure Manual* § 4.1 (a) and (b).

² *Id.*

³ See Va. Code § 2.2-3004 (C); *Grievance Procedure Manual* § 4.1(c) (claims that relate solely to the content of personnel policies do not qualify for a hearing).

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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 and file a notice of appeal with the circuit court pursuant to 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 wishes to conclude the grievance and notifies the agency of that desire.

Claudia T. Farr
Director

⁴ This ruling only determines whether under the grievance statutes this grievance qualifies for a hearing. This ruling does not address whether the agency's policy may conflict with any constitutional or statutory provision or whether the grievant may have some other legal or equitable remedy available to him.