

Issue: Qualification – Management Actions (Assignment of Duties); Ruling Date:  
March 31, 2011; Ruling No. 2011-2903; Agency: Department of Juvenile Justice;  
Outcome: Not Qualified.



***COMMONWEALTH of VIRGINIA***  
***Department of Employment Dispute Resolution***  
**QUALIFICATION RULING OF DIRECTOR**

In the matter of Department of Juvenile Justice  
Ruling Number 2011-2903  
March 31, 2011

The grievant has requested a ruling on whether her August 18, 2010 grievance with the Department of Juvenile Justice (the agency) qualifies for hearing. For the reasons discussed below, this grievance does not qualify for a hearing.

**FACTS**

The grievant is employed as a Juvenile Correctional Officer (JCO) with the Department of Juvenile Justice. On August 13, 2010, the agency drafted the grievant to work overtime hours, even though she had expressed to her supervisor she could not stay because she was suffering adverse side effects from her medication. The grievant asserts in her grievance that the agency misapplied its overtime draft policy by inappropriately exempting two officers from the draft that day for non-emergency purposes, which caused her to be drafted. Failing to reach resolution during the management steps, the grievant now seeks qualification for hearing from this Department.

**DISCUSSION**

The grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.<sup>1</sup> Further, complaints relating solely to means, methods, and personnel by which work activities are undertaken, work activity accepted by an employee as a condition of employment, or which reasonably may be expected to be a part of the job content, "shall not proceed to a hearing"<sup>2</sup> unless the grievance raises a sufficient question of discrimination, retaliation, discipline, or a misapplication or unfair application of policy.<sup>3</sup> In this case, the grievant argues the agency misapplied and unfairly applied its draft policy.

The agency's overtime draft procedures ("OT Draft Procedures") require all security personnel to work overtime as a condition of employment, and that the draft be carried out "in a

---

<sup>1</sup> See Va. Code § 2.2-3004(B).

<sup>2</sup> Va. Code § 2.2-3004(C).

<sup>3</sup> *Grievance Procedure Manual* § 4.1(c).

fair, equitable and consistent manner.”<sup>4</sup> The OT Draft Procedures establish a numbering system whereby the employee with the highest number of days since his or her last draft is selected to be drafted. Each day the Shift Commander records the draft order on the muster minutes, and the security staff is required to initial the muster minutes signifying their understanding of their draft order.<sup>5</sup> The Shift Commander is not allowed to release staff on duty until he or she has determined that sufficient staff is available to provide coverage for the next shift.<sup>6</sup> However, the Shift Commander may excuse an officer from working the draft due to emergencies.<sup>7</sup> When an officer is excused for emergency purposes, the agency’s overtime draft procedures state:

“The reason for the approval shall be noted in the Shift Commanders Logbook. Officers who are excused from the draft shall maintain their number. It is the responsibility of the Shift Commander to arrange for coverage. The officer who is excused is not responsible for finding his/her replacement. The officer must provide appropriate documentation of the emergency upon their return to work. Failure to submit documentation may result in use of the Standards of Conduct.<sup>8</sup> Temporary exemptions from the draft must be approved by the Superintendent. Officers requesting exemption must submit a request in writing.”<sup>9</sup>

In this particular case, the agency needed to draft three officers on August 13, 2010. According to the August 13<sup>th</sup> muster minutes, the grievant was first in the draft order for that day. Although another officer had a higher draft number than the grievant, the agency asserts he had been exempted from the draft due to “transportation problems.” Even accepting for purposes of this ruling only the grievant’s assertion that this particular officer had been inappropriately exempted for a non-emergency purpose, we note that here, where three officers were needed for overtime, the grievant would have inevitably been drafted anyway since she had the second highest draft number. Furthermore, the Shift Commander has the authority to independently determine whether an employee such as the grievant may be exempted from the draft due to an emergency situation. Although the grievant expressed that she was feeling drowsy from her medication, the Shift Commander did not consider drowsiness to be an “emergency” situation. Management has significant discretion in the administration of its policies. This Department will not second-guess management’s decisions regarding the administration of its policies, absent evidence that the agency’s actions are plainly inconsistent with other similar decisions within the agency or otherwise arbitrary or capricious.<sup>10</sup> The grievant has provided no such evidence with respect to the August 13, 2010 draft decisions.

The grievant further alleges that the agency unfairly exempted some officers from the July 16, 2010, July 17, 2010, and August 14, 2010 drafts as well. She asserts that not only are other officers excused from the draft for non-emergency purposes, but they are not submitting the appropriate documentation. Agency policy requires the Shift Commander to note the reason for the exemption approval in the Shift Commanders Logbook and requires the exempt officer to

---

<sup>4</sup> See Department of Juvenile Justice Institution Operating Procedures, Overtime Draft Procedure Number IOP-103, Chapter 1, §103.4.0.

<sup>5</sup> *Id.* at §103-4.1(8).

<sup>6</sup> *Id.* at §103-4.3(1).

<sup>7</sup> *Id.* at §103-4.6.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at §103-4.7.

<sup>10</sup> See e.g. EDR Ruling No. 2009-2090.

provide appropriate documentation of the emergency upon returning to work.<sup>11</sup> Based on this Department's investigation, it would appear that the agency may not have consistently adhered to these draft procedures. For example, the agency exempted the highest draft numbered officer on August 13<sup>th</sup> and August 14<sup>th</sup> due to transportation problems, but the Shift Commander did not note the reason in the Shift Commanders Logbook. Likewise, the officer who had the third highest draft number on August 13<sup>th</sup> left before the draft and no explanation was noted in the Logbook. Similarly, an officer who held the highest draft number on July 16<sup>th</sup> and July 17<sup>th</sup> was excused from the draft, but the Shift Commander only noted that officer was "excused" on July 16<sup>th</sup> and did not make any notation for July 17<sup>th</sup>. Although each of these instances did not personally affect the grievant or cause her to be subsequently drafted, it would appear the agency has occasionally overlooked certain mandatory requirements of the agency's overtime draft procedures.

Despite the apparent deviations from policy described above and regardless of whether the grievant should have been listed as first or second in the draft order, she inevitably would have been drafted on August 13, 2010. In addition, the grievant has presented no evidence that the August 13<sup>th</sup> draft detrimentally altered the terms or conditions of her employment such that she suffered an "adverse employment action."<sup>12</sup> Accordingly, this grievance does not qualify for hearing. However, this Department cautions that frequent and repeated disregard of the agency's overtime draft procedures in a manner that personally affects the grievant might later serve to support an adverse employment action against the grievant. The grievant may address any future alleged misapplication of the OT Draft Procedures through a subsequent grievance challenging such acts.

#### 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

---

<sup>11</sup> *Id.* at §103-4.6.

<sup>12</sup> For misapplication or unfair application of policy claims to qualify for hearing, the grievant must have suffered an "adverse employment action" effecting the terms, conditions or benefits of her employment. *Holland v. Washington Homes, Inc.*, 487 F.3d 208, 219 (4<sup>th</sup> Cir. 2007). *See e.g.* EDR Ruling No. 2011-2845.