

Issue: Qualification – Compensation (Other); Ruling Date: August 3, 2011;
Ruling No. 2012-3041; Agency: Department of Juvenile Justice; Outcome:
Not Qualified.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of the Department of Juvenile Justice
EDR Ruling No. 2012-3041
August 3, 2011

The grievant has requested a ruling on whether his January 17, 2011 grievance with the Department of Juvenile Justice (the agency) qualifies for a hearing. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

The grievant was formerly employed at Facility NB. However, when that facility was closed, he was offered and accepted an open position at Facility C. Because of the distance from his home, the grievant was permitted to stay and sleep at Facility C. It appears the grievant began at Facility C in December 2009.

Following receipt of a hotline complaint in 2010, the agency reviewed the practice of having some employees sleep at its facilities and determined that the agency was providing a taxable benefit of lodging. As such, the agency submitted revised tax forms to restate the taxable income of certain employees, including the grievant. The grievant's 2009 and 2010 tax forms were impacted by this action.

The grievant has challenged the agency's action in this case. He states that he was never told that by staying at Facility C he would be receiving a taxable benefit. The grievant also states that a number of other agency employees have done the same thing and not been subject to the taxable benefit revision. The agency states it has taken similar action regarding the taxable benefits of many employees, not just the grievant. The agency also states that it is bound to report the taxable benefit by federal law.

DISCUSSION

The grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.¹ Thus, by statute and under the grievance procedure, complaints relating solely to the establishment and revision of

¹ See Va. Code § 2.2-3004(B).

wages, salaries, and general benefits “shall not proceed to hearing”² unless there is sufficient evidence of discrimination, retaliation, unwarranted discipline, or a misapplication or unfair application of policy. The grievant has not raised discrimination, retaliation, or discipline in his grievance. As such, this grievance is best analyzed under a theory of misapplication or unfair application of 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. This Department has reviewed no policy that the agency has misapplied or unfairly applied. Although it may have been a better practice for the agency to have notified the grievant about the taxable benefit issue before he transferred to Facility C, we cannot find that the failure to do so was a violation of policy.³ Moreover, it is not even clear that those involved would have even known about the taxable benefit issue at that time. Rather than running afoul of any policy, the agency appears to have acted consistently with the requirements of federal tax law and regulation.⁴ Nothing has been presented that would suggest otherwise.

The grievant also argues that he was treated differently than other agency employees. Even if that were the case, it would not necessarily change the fact that the agency was still required by law to report the benefit he received as taxable. However, it appears that the agency has taken steps to address all employees who received similar benefits, not just the grievant.

While the grievant could understandably be upset at the situation, there is no remedy available under the grievance procedure. Rather, it appears the agency has acted consistently with federal law and, as such, a hearing officer would have no authority to provide relief.⁵ Consequently, 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 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

² Va. Code § 2.2-3004(C).

³ It is notable that the agency head has acknowledged and regrets this oversight and has taken steps to make sure the same problem does not recur.

⁴ *See, e.g.*, 26 C.F.R. § 1.119-1(b).

⁵ *See Grievance Procedure Manual* § 5.9.

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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