

Issue: Qualification - Benefits/Leave (Severance Benefits); Ruling Date: November 1, 2011; Ruling No. 2012-3140; 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
Ruling Number 2012-3140
November 1, 2011

The grievant has requested a ruling on whether his August 30, 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 had previously submitted his intention to the agency to resign and retire effective October 1, 2011. Along with his resignation and retirement, the agency approved the grievant's request to use leave for the period August 1, 2011 to September 30, 2011. However, before that time, the agency reportedly discovered conduct by the grievant that raised concerns. The grievant was given the option on July 6, 2011 to move up his resignation and retirement date to September 1, 2011, take leave until that time, and leave the agency that day. In exchange, the grievant was told that the agency would not investigate the alleged misconduct. If the grievant did not choose to move his resignation and retirement date, he was effectively told that the agency would be taking disciplinary action against him. The grievant decided to move his resignation and retirement date up to September 1, 2011.

Following the grievant's departure, the agency elected not to fill his position. Instead, the agency assigned his duties to another employee, effectively combining the oversight duties of the two positions. The grievant submitted his August 30, 2011 grievance to challenge these events. The grievant argues that he was forced out by the agency and that his position was eliminated in a process akin to a layoff. Thus, the grievant asserts that he should be entitled to benefits under the Workforce Transition Act (WTA).¹ The agency has declined to qualify the grievance for a hearing and the grievant now appeals that determination.

DISCUSSION

Although state employees with access to the grievance procedure may grieve anything related to their employment, only certain grievances qualify for a hearing.² By statute and under

¹ Va. Code § 2.2-3200, et seq.

² See *Grievance Procedure Manual* § 4.1.

the grievance procedure, management reserves the exclusive right to manage the affairs and operations of state government.³ Further, complaints relating solely to issues such as the methods, means, and personnel by which work activities are to be carried out, as well as layoff, position classifications, hiring, promotion, transfer, assignment, and retention of employees within the agency “shall not proceed to hearing” unless there is sufficient evidence of discrimination, retaliation, unwarranted discipline, or a misapplication or unfair application of policy.⁴ In this case, the grievant essentially alleges misapplication and/or unfair application of policy.

Under the WTA and applicable state policy, WTA benefits are only available in cases of “[l]ayoff due to budget reductions, agency reorganization, work force downsizing, or other causes not related to the job performance or conduct of the employee,” and are not available for voluntary resignations.⁵ The grievant’s factual allegations indicate that his separation was either the result of 1) voluntary resignation/retirement, 2) forced separation due to allegations of misconduct, or 3) layoff due to reorganization. In either of the first two scenarios, the grievant would have no entitlement to WTA benefits. Therefore, unless the facts of this case raise a sufficient question of a layoff, there is no basis to qualify the grievance for a hearing to determine the question of whether the grievant should receive such benefits.

Taking the facts in a light most favorable to the grievant, it appears that the agency was discussing prior to the grievant’s resignation and retirement that after the grievant left the agency they might not fill his position and consolidate his duties to another position. Even if this is true, these facts do not show that the agency eliminated his position prior to his intended resignation and retirement and laid the grievant off. To consolidate positions or duties to address or even capitalize on the grievant’s decision to retire is a far different case from eliminating his position first and thus causing him to retire.⁶ Even taking into account the management action allegedly forcing the grievant to move up his retirement date, the facts still indicate that the grievant had previously submitted his intention to voluntarily resign and retire effective October 1, 2011. The facts in this case do not support the constructive creation of an after-the-fact layoff.

Based on the foregoing, the grievant’s arguments do not raise a sufficient question that the agency has violated any mandatory provision of policy or that its actions were arbitrary or capricious in not providing WTA benefits. Because under any theory raised by the grievant, he has no basis to claim entitlement to WTA benefits, there is no basis to qualify this grievance for a hearing.

³ Va. Code § 2.2-3004(B).

⁴ Va. Code § 2.2-3004(C); *Grievance Procedure Manual* § 4.1(c).

⁵ DHRM Policy 1.57, *Severance Benefits*.

⁶ The grievant attempts to rely on the agency head’s statement that “the consolidation of the management oversight of the two facilities was conditioned upon your decision to retire,” to support his claim. However, the agency head’s statement supports a contrary position. The agency decided to consolidate the management oversight duties as a result of the grievant deciding to retire. The grievant’s position was not eliminated causing the grievant to retire. It was the other way around.

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