

Virgin Islands Code Annotated Currentness

Title 3. Executive

Chapter 25. Personnel Merit System, Compensation, Expenses and Miscellaneous Benefits

Subchapter IV. Tests, Appointments, Promotions, and Dismissals

3 V.I.C. § 531

§ 531 Discrimination on account of nonmerit factors; appeals

(a) No question in any form of application or in any examination shall be so framed as to elicit information concerning the political or religious opinions or affiliations or race, age or sex of any applicant, nor shall any inquiry be made concerning such opinions or affiliations, and all disclosure thereof shall be discountenanced. No discriminations shall be exercised, threatened, or promised by any person in the government service against or in favor of any person in recruitment, examination, appointment, training, promotion, retention or any other personnel action, because of political or religious opinions or affiliations or because of race, age or sex, national origin, or any other nonmerit factor.

(b) Any applicant or employee who has reason to believe that he has been discriminated against because of religious or political opinions or affiliations or race, age or sex or national origin in any personnel action may appeal to the Board. The appellant and the person responsible for the alleged discriminatory action shall have the right to be heard and to present evidence. If the Board finds that there was discrimination on any of the above nonmerit factors it shall order appropriate corrective action and its decision shall be final.

(c) The limitation for filing a claim under this section is 180 days from the date the alleged discriminatory conduct is known by the applicant or the employee.

(d) The Government shall promote the prevention of workplace discrimination and inform all applicants and employees of their rights against workplace discrimination, harassment and retaliation.

Credits

Added June 28, 1963, No. 1046, Sess. L. 1963, p. 416; amended Sept. 2, 1994, No. 6010, §§ 1(h), (i), Sess. L. 1994, p. 164; amended By Adding March 23, 2016, No. 7854, § 1, Sess. L. 2016, p. .

HISTORY

Amendments 1994. Subsection (a): Inserted 'age or sex' following 'race' in the first and second sentences. Subsection (b): Inserted 'age or sex' following 'race' and substituted #Board' for 'Commission' following 'appeal to the' in the first sentence and substituted 'Board' for 'Commission' preceding 'finds that' in the third sentence.

Effective date of amendments

1994. Act Sept. 2, 1994, No. 6010, § 2, Sess. L. 1994, p. 165, provided that the amendment to this section by sections 1(h) and (i) of the act shall be effective Jan. 1, 1995.

Former section 531. Former section 531 of this title, which related to appeals to commission regarding dismissals or demotions, findings and recommendations, final decisions, review, and reinstatement, was

repealed by Act Feb. 27, 1962, No. 819, § 7, Sess. L. 1962, p. 53, and is now covered by section 530 of this title. For repeal of such former section 531 as effective Mar. 1, 1962, see note under section 5 of this title.

CROSS REFERENCES

Power of the Commission with respect to administering oaths, subpoenaing witnesses, and compelling the production of records, see section 473 of this title.

Unclassified or temporary employee election to classified employee, see note preceding section 451 of this title.

ANNOTATIONS

1.

Purpose.

The overall legislative intention of this section, governing appeals to the Government Employees Service Commission alleging discrimination on account of nonmerit factors, was to vest in the Commission jurisdiction to hear disputes over classification, discharge, or suspension, or the application of nonmerit factors in promotion or hiring. [Upson v. Quetel](#), 20 V.I. 576, 1984 U.S. Dist. LEXIS 16550 (D.C.V.I. 1984).

2.

Employees not in classified service.

A probational government employee may be dismissed from his employment if the department head recommends his removal to the appointing authority on the grounds that he is unable or unwilling to perform satisfactorily; notice and an opportunity to be heard are required by section 527 of this title if the reason for dismissal is fraud or error in the employee's appointment or by this section the employee asserts that the dismissal was based on nonmerit factors. [Schuster v. Thraen](#), 18 V.I. 287, 1981 U.S. Dist. LEXIS 10417 (D.C.V.I. 1981).

An individual is entitled to relief under this section if he or she is discharged from governmental employment as punishment for exercising First Amendment rights of free speech, regardless of the nature of the individual's employment at the time of the dismissal. [Schuster v. Thraen](#), 18 V.I. 287, 1981 U.S. Dist. LEXIS 10417 (D.C.V.I. 1981).

Where a complaint alleges that an individual's employment with the government was terminated as punishment for exercising First Amendment rights of free speech, the complainant has the burden of showing that his speech was constitutionally protected and was a motivating factor in the defendant's decision to dismiss him; if this burden is met, the defendant then has the burden of showing that the complainant would have been dismissed even in the absence of the protected speech in question. [Schuster v. Thraen](#), 18 V.I. 287, 1981 U.S. Dist. LEXIS 10417 (D.C.V.I. 1981).

Where plaintiffs, who brought suit against the officials who dismissed them from their employment as juvenile corrections officers, alleged that, in the past, they had called attention to inefficiencies at the juvenile corrections facility and that the real reason for their dismissals was the desire of the director of the Youth Services Administration to conceal those inefficiencies, their complaint asserted a cognizable claim for relief under this section based on their First Amendment rights of free speech. [Schuster v. Thraen](#), 18 V.I. 287, 1981 U.S. Dist. LEXIS 10417 (D.C.V.I. 1981).

Emergency, provisional and temporary employees are specifically excluded from classified service by Virgin Islands Code and Regulations, and unless discriminated against on account of nonmerit factors, they are not entitled to appeal employment disciplinary proceedings against them to the 7 V.I. Op. Att'y Gen. 122.

3.

Government officers.

Administrator of Government Employees Retirement System was an ‘officer # as opposed to an ‘employee‘within meaning of statute, and was therefore not entitled to appeal his termination on grounds that he was discriminated against because of his political opinion or affiliation. [Molloy v. Government Empl. Servs. Comm'n](#), 42 V.I. 89, 2000 V.I. LEXIS 8 (V.I. Terr. Ct. 2000).

4.

Jurisdiction.

In an appeal filed with Government Employees Service Commission (GESC), where an agent of Narcotics Strike Force (NSF) alleged that he was discriminated against based on his termination for a nonmerit factor, i.e., meeting with FBI agents in connection with an investigation of NSF, this was a sufficient basis to evoke GESC's jurisdiction, and, accordingly, GESC acted within its statutory powers and did not abuse its discretion when it exercised jurisdiction over the agent's appeal. [V. I. Narcotics Strike Force v. Watson](#), 43 V.I. 75, 2000 V.I. LEXIS 16 (V.I. Terr. Ct. 27-NOV-00).

5.

‘Nonmerit factor‘defined.

Phrase ‘nonmerit factor‘as used in this section denotes a factor other than one which relates to an employee's fitness or ability to adequately perform the duties of their position. [V. I. Narcotics Strike Force v. Watson](#), 43 V.I. 75, 2000 V.I. LEXIS 16 (V.I. Terr. Ct. 27-NOV-00).

6.

Improper nonmerit factor applied.

Government Employees Service Commission did not abuse its discretion when it held that termination by Narcotics Strike Force (NSF) of an agent for meeting with FBI agents in connection with an investigation of NSF was based upon an improper nonmerit factor. [V. I. Narcotics Strike Force v. Watson](#), 43 V.I. 75, 2000 V.I. LEXIS 16 (V.I. Terr. Ct. 27-NOV-00).

7.

Corrective action.

The clear specific aim of this section is to discourage employment discrimination based on nonmerit factors; thus, failure of Government Employees Service Commission to award back pay to a probationary employee found to be the victim of improper discrimination was an abuse of discretion. [V. I. Narcotics Strike Force v. Watson](#), 43 V.I. 75, 2000 V.I. LEXIS 16 (V.I. Terr. Ct. 27-NOV-00)

8.

Procedure.

Plaintiff's discrimination claim under V.I. Code Ann. tit. 3, § 531 failed, as it was untimely under [V.I. Code Ann. tit. 3, § 530a](#) and plaintiff did not name the Public Employees Relations Board as a respondent. [Bonelli v. Gov't of the V.I.](#), V.I. , 2015 V.I. LEXIS 29 (V.I. Super. Ct. Mar. 19, 2015). SUPERIOR COURT OF THE VIRGIN ISLANDS, DIVISION OF ST. THOMAS AND ST. JOHN

Cited.

Cited in [Moorhead v. Government of the Virgin Islands](#), 19 V.I. 65 (D.C.V.I. 1982); [Monsanto v. Government of V.I.](#), 20 V.I. 446, 1984 V.I. LEXIS 7 (Terr. Ct. St. T. and St. J. 1984).

3 V.I.C. § 531, VI ST T. 3 § 531

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