

Issue: Qualification - Work Conditions (hours of work/shift); Ruling Date: May 1, 2017;
Ruling No. 2017-4523; Agency: Department of Corrections; Outcome: Not Qualified.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Employment Dispute Resolution¹

QUALIFICATION RULING

In the matter of the Department of Corrections
Ruling Number 2017-4523
May 1, 2017

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) on whether her grievance filed on or about November 30, 2016 with the Department of Corrections (the “agency”) qualifies for a hearing. For the reasons set forth below, the grievant’s November 30, 2016 grievance does not qualify for a hearing.

FACTS

The grievant is employed by the agency as a corrections officer. In early November 2016, the grievant was counseled regarding her tardiness and reassigned to the night shift. The agency states that the reason for her transfer was to reduce the grievant’s tardiness and/or need to leave early. On or about November 30, 2016, the grievant initiated a grievance challenging her shift reassignment. The grievant alleges that the agency has enforced rules and policies inconsistently among staff.²

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.³ Additionally, by statute and under the grievance procedure, management is reserved the exclusive right to manage the affairs and operations of state government.⁴ Thus, claims relating to issues such as to the hiring, promotion, transfer, assignment, and retention of employees generally do not qualify for a hearing, unless the grievant presents evidence raising a sufficient

¹ Effective January 1, 2017, the Office of Employment Dispute Resolution merged with another office area within the Department of Human Resource Management, the Office of Equal Employment Services. Because full updates have not yet been made to the *Grievance Procedure Manual*, this office will be referred to as “EDR” in this ruling to alleviate any confusion. EDR’s role with regard to the grievance procedure remains the same post-merger.

² During the management resolution steps, the grievant requested documentation regarding other employees’ tardiness and related shift changes and disciplinary actions. The agency refused to provide the requested documentation, stating that it could not produce the information as it was “personal and confidential.” As the grievant did not pursue the non-compliance process set forth in Section 6.3 of the *Grievance Procedure Manual*, this issue will not be addressed further in this ruling. However, contrary to the Agency’s representation, disciplinary information may be available pursuant to Section 8.2 of the *Grievance Procedure Manual*.

³ See *Grievance Procedure Manual* § 4.1.

⁴ See Va. Code § 2.2-3004(B).

question as to whether discrimination, retaliation, or discipline may have improperly influenced management's decision, or whether state policy may have been misapplied or unfairly applied.⁵

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions."⁶ Thus, typically, the threshold question is whether the grievant has suffered an adverse employment action. An adverse employment action is defined as a "tangible employment action constitut[ing] a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits."⁷ Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one's employment.⁸

In this case, the grievant challenges a reassignment to a different shift. A transfer or reassignment, or denial thereof, may constitute an adverse employment action if a grievant can show that the transfer/reassignment had some significant detrimental effect on the terms, conditions, or benefits of his/her employment.⁹ A reassignment or transfer with significantly different responsibilities, or one providing reduced opportunities for promotion can constitute an adverse employment action, depending on all the facts and circumstances.¹⁰ However, in general, a lateral transfer will not rise to the level of an adverse employment action.¹¹ Further, subjective preferences do not render an employment action adverse without sufficient objective indications of a detrimental effect.¹² Under the facts presented to EDR, it does not appear that the grievant's reassignment amounted to an adverse employment action, as it did not affect her title, salary or the general nature of her job responsibilities. Accordingly, the grievance does not qualify for hearing.¹³

EDR's qualification rulings are final and nonappealable.¹⁴



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⁵ *Id.* § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).

⁶ *See Grievance Procedure Manual* § 4.1(b).

⁷ *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

⁸ *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007) (citation omitted).

⁹ *See id.*

¹⁰ *See James v. Booz-Allen & Hamilton, Inc.*, 368 F.3d 371, 375-77 (4th Cir. 2004); *Boone v. Goldin*, 178 F.3d 253, 255-256 (4th Cir. 1999); *see also Edmonson v. Potter*, 118 Fed. Appx. 726, 729 (4th Cir. 2004).

¹¹ *See Williams v. Bristol-Myers Squibb Co.*, 85 F.3d 270, 274 (7th Cir. 1996).

¹² *See, e.g., Jones v. D.C. Dep't of Corr.*, 429 F.3d 276, 284 (D.C. Cir. 2005); *James*, 368 F.3d at 377; *Fitzgerald v. Ennis Bus. Forms, Inc.*, No. 7:05CV00782, 2007 U.S. Dist. LEXIS 875, at *14-15 (W.D. Va. Jan. 8, 2007); *Stout v. Kimberly Clark Corp.*, 201 F. Supp. 2d 593, 602-03 (M.D.N.C. 2002).

¹³ Va. Code § 2.2-3004(A); *see also Grievance Procedure Manual* § 4.1(b).

¹⁴ Va. Code § 2.2-1202.1(5).