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QUALIFICATION RULING

In the matter of the Virginia Department of Health
Ruling Number 2023-5457
September 23, 2022

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Virginia Department of Human Resource Management on whether his July 28, 2022 grievance with the Virginia Department of Health (the “agency”) qualifies for a hearing. For the reasons discussed below, the grievance is not qualified for a hearing.

FACTS

On or about June 14, 2022, the grievant received a development plan that included certain deadlines for completion of tasks. The grievant was out of work on “mandatory leave” from June 21 to approximately July 15. The grievant initiated a grievance on or about July 28, 2022, alleging that the deadlines in the development plan have not all been corrected to account for his time out of the office. The resolution step documentation appears to reflect that some deadlines were adjusted, but others were not because either the task had been completed or the deadline was associated with the contracting cycle.¹ After proceeding through the management resolution steps, the grievance was not qualified for a hearing by the agency head. The grievant now appeals that determination to EDR.

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.² Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.³ Thus, claims relating to issues such as the methods, means and personnel by which work activities are to be carried out generally do not qualify for a hearing, unless the grievant presents evidence raising a sufficient 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.⁴

¹ The grievant appears to dispute that certain deadlines are associated with the contracting cycle.

² See *Grievance Procedure Manual* § 4.1.

³ Va. Code § 2.2-3004(B).

⁴ *Id.* § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve “adverse employment actions.”⁵ Thus, typically, a 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.”⁶ Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one’s employment.⁷

This grievance essentially challenges the establishment and modification of deadlines for certain tasks required of the grievant. While these tasks are connected with a development plan, EDR cannot find that a dispute over appropriate work-related deadlines constitutes an adverse employment action because such an action, in and of itself, does not have a significant detrimental effect on the terms, conditions, or benefits of employment. Therefore, the grievance does not qualify for a hearing. Nonetheless, while the establishment of deadlines in the development plan have not had an adverse impact on the grievant’s employment, a failure to meet the requirements of the plan could potentially be used to support an adverse employment action against the grievant in the future. Should any failure in meeting the deadlines listed in the development plan later serve to support an adverse employment action against the grievant, such as a formal Written Notice or a “Below Contributor” annual performance rating, this ruling does not prevent the grievant from attempting to contest the merits of these allegations through a subsequent grievance challenging the related adverse employment action.

EDR’s qualification rulings are final and nonappealable.⁸

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⁵ See *Grievance Procedure Manual* § 4.1(b).

⁶ *Ray v. Int’l Paper Co.* 909 F.3d 661, 667 (4th Cir. 2018) (quoting *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998)).

⁷ See *Laird v. Fairfax County*, 978 F.3d 887, 893 (4th Cir. 2020) (citing *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007)) (an adverse employment action requires more than a change that the employee finds “less appealing”).

⁸ See Va. Code § 2.2-1202.1(5).