

Issue: Qualification – Work Conditions (hours of work/shift); Ruling Date: February 22, 2017; Ruling No. 2017-4428; 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 2017-4428
February 22, 2017

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether her August 15, 2016 grievance with the Department of Corrections (the “agency”) qualifies for a hearing. For the reasons discussed below, the grievance is not qualified for a hearing.

FACTS

The grievant was employed by the agency as an Operations Lieutenant. On or about August 15, 2016, the grievant initiated a grievance challenging a shift change. After proceeding through the management resolution steps, the grievance was not qualified for a hearing by the agency head. The grievant appealed that determination to EDR.

On September 23, 2016, the agency issued disciplinary action to the grievant and removed her from employment. The grievant challenged the disciplinary action through the grievance process, and a hearing was held on the grievant’s dismissal on November 10, 2016. The grievant’s August 15 grievance was stayed pending the results of that hearing. In a hearing decision dated November 30, 2016, the hearing officer upheld a Group III Written Notice with removal issued to the grievant.² The hearing decision was not disturbed by EDR on administrative review.³ As the administrative process regarding the grievant’s dismissal grievance is complete, EDR will now address the grievant’s request for qualification of her August 15, 2016 grievance for hearing.

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.⁴ Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.⁵ Thus, claims relating to issues such as the methods, means and personnel by which work activities are to be carried out generally do not

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 See Decision of Hearing Officer, Case No. 10884 (November 30, 2016).

³ See EDR Ruling Number 2017-4459.

⁴ See *Grievance Procedure Manual* § 4.1.

⁵ Va. Code § 2.2-3004(B).

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.⁶

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions."⁷ 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."⁸ Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one's employment.⁹

In this case, it is questionable whether the shift change challenged by the grievant constitutes an adverse employment action or was discriminatory, retaliatory, or otherwise violated policy. However, even if the shift change were in some manner inappropriate or improper, a hearing officer would be unable to address this claim effectively. EDR has recognized that there are some cases when qualification is inappropriate, even if a grievance challenges a management action that might qualify for a hearing. For example, during the resolution steps, an issue may have become moot, either because the agency granted the specific relief requested by the grievant or an interim event prevents a hearing officer from being able to grant any meaningful relief. Additionally, qualification may be inappropriate when the hearing officer does not have the authority to grant the relief requested by the grievant and no other effectual relief is available.

Even though a hearing officer is not limited to the specific relief requested by the grievant,¹⁰ this is a case where a hearing officer would be unable to award any meaningful relief under the grievance procedure. Events that happened after the grievant initiated her grievance have rendered moot her claims regarding the shift change. As the grievant has now been terminated from her employment with the agency, the relief available through the grievance process on her August 16 grievance—reinstatement to her previous shift--would be meaningless. Accordingly, there is no reason for the grievance to proceed to a hearing. The grievance is, therefore, not qualified and will not proceed further.

EDR's qualification rulings are final and nonappealable.¹¹



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⁶ *Id.* § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).

⁷ *See Grievance Procedure Manual* § 4.1(b).

⁸ *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

⁹ *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007) (citation omitted).

¹⁰ *Rules for Conducting Grievance Hearings* § VI(A).

¹¹ *See Va. Code* § 2.2-1202.1(5).