

Issues: Qualification – Discrimination (Race) and Retaliation (Other Protected Right);
Ruling Date: August 4, 2016; Ruling No. 2016-4364; Agency: Department of
Behavioral Health and Developmental Services; Outcome: Not Qualified.



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

QUALIFICATION RULING

In the matter of the Department of Behavioral Health and Developmental Services
Ruling Number 2016-4364
August 4, 2016

The grievant has requested a ruling on whether his February 16, 2016 grievance with the Department of Behavioral Health and Developmental Services (the “agency”) qualifies for a hearing. For the reasons discussed below, the Office of Employment Dispute Resolution (“EDR”) at the Virginia Department of Human Resource Management (“DHRM”) finds that this grievance does not qualify for a hearing.

FACTS

On February 16, 2016, the grievant initiated a grievance asserting that his agency had discriminated and retaliated against him. In particular, the grievant alleges that his supervisor gave him a more difficult assignment on a snow day than he gave other classified employees and denied him the use of equipment, engaged in “inappropriate conversation” about the grievant with contractors, attempted to assign the grievant work when the grievant was injured, and left the grievant’s timesheet in a location in view of other employees. As relief, the grievant seeks “nothing less” than his supervisor’s resignation or transfer. After the grievance proceeded through the management resolution steps, the grievant asked the agency head to qualify the grievance for hearing. The agency head denied the request for qualification, and the grievant has appealed 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.¹ Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.² 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.³

¹ See *Grievance Procedure Manual* § 4.1.

² Va. Code § 2.2-3004(B).

³ *Id.* § 2.2-3004(A); *Grievance Procedure Manual* § 4.1(c).

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve “adverse employment actions.”⁴ 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.”⁵ Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one’s employment.⁶

Although it is arguably a close call, the conduct challenged by the grievant does not involve an adverse employment action, as it does not appear, from the February 16 grievance, that the grievant has been subjected to a significant change in employment status. More specifically, in regard to that conduct challenged in the February 16 grievance, he has not experienced a change of job status, a loss of pay, or a disciplinary action. As this grievance does not involve an adverse employment action, qualification would be unwarranted.

Although the February 16 grievance is not qualified for hearing, during the course of its investigation, EDR became aware of other allegations of ongoing discriminatory and/or retaliatory conduct by the grievant’s supervisor and co-workers, which, if true, are troubling. While such claims may not be pursued through both the state employee grievance procedure and the complaint process available through DHRM’s Office of Equal Employment Services (“OEES”),⁷ to the extent there is conduct which the grievant either has not raised explicitly or has not addressed through the grievance procedure, he may wish to contact OEES. Nothing in this ruling limits the grievant’s opportunity to raise his concerns of discriminatory and/or retaliatory conduct with OEES. EDR takes no position regarding the propriety of the alleged agency actions, but rather is merely ensuring that the grievant is aware of OEES as an additional forum in which he may file a complaint.⁸

EDR’s qualification rulings are final and nonappealable.⁹



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⁴ See *Grievance Procedure Manual* § 4.1(b).

⁵ *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

⁶ *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007) (citation omitted).

⁷ *Grievance Procedure Manual* § 1.6.

⁸ OEES can be contacted at 1-800-533-1414.

⁹ Va. Code § 2.2-1202.1(5).