

Issue: Qualification – Management Actions (non-disciplinary transfer); Ruling Date:
May 23, 2018; Ruling No. 2018-4720; Agency: Department of Corrections;
Outcome: Not Qualified.



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

QUALIFICATION RULING

In the matter of the Department of Corrections
Ruling Number 2018-4720
May 23, 2018

The grievant has requested a ruling from the Office of Equal Employment and Dispute Resolution (“EEDR”) at the Department of Human Resource Management (“DHRM”) on whether his February 9, 2018 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 is employed by the agency as a Corrections Captain. On or about January 10, 2018, the grievant was notified that he was being transferred to a different facility as part of an effort to “chang[e] the culture and direction” of his former facility. The grievant filed a grievance on February 9, alleging that the reassignment was a “procedural misapplication of policy” because he had no “disciplinary issues” and there was no “proper documentation” to support the agency’s decision.¹ The grievant further contends that the facility to which he was transferred is approximately 84 miles from his home and that the reassignment is “a physical hardship, financial hardship, and [has] placed [him] under undue stress”² 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 EEDR.

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, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.⁴ 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

¹ In his request for a ruling from EEDR, the grievant notes that the agency head’s qualification decision makes reference to an annual performance evaluation rating as an issue raised in the grievance. This appears to be a clerical error in the qualification decision, as the grievance itself and the other management step responses makes no reference to the grievant’s performance evaluation. Accordingly, this issue will not be discussed further in this ruling.

² The grievant does not appear to have explicitly raised any specific issue relating to his ability to be reimbursed for relocation expenses. If, however, relocation was necessary, he may be eligible for such reimbursement pursuant to the agency’s Operating Procedure 240.2, *Moving and Relocation Expenses*.

³ See *Grievance Procedure Manual* § 4.1.

⁴ Va. Code § 2.2-3004(B).

whether discrimination, retaliation, or discipline may have improperly influenced management's decision, or whether state policy may have been misapplied or unfairly applied.⁵ The grievant has not alleged discrimination, retaliation, or discipline. Therefore, the grievant's claims could only qualify for hearing based upon a theory that the agency has misapplied or unfairly applied policy.

For an allegation of misapplication of policy or unfair application of policy to qualify for a hearing, there must be facts that raise a sufficient question as to whether management violated a mandatory policy provision, or whether the challenged action, in its totality, was so unfair as to amount to a disregard of the intent of the applicable policy. 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

A transfer or reassignment to a different position may constitute an adverse employment action if a grievant can show that there was some significant detrimental effect on the terms, conditions, or benefits of his/her employment.⁹ For example, a reassignment or transfer with significantly different responsibilities, or one providing reduced opportunities for promotion, may, depending on all the facts and circumstances, be considered an adverse employment action.¹⁰ However, in general, a lateral transfer will not rise to the level of an adverse employment action.¹¹ Subjective preferences do not render an employment action adverse without sufficient objective indications of a detrimental effect.¹² In this case, the grievant has not indicated that his reassignment to a different facility has had an effect on his job title and responsibilities, and it does not appear that they were modified in any way as a result of the reassignment. An employee's unmet preference regarding work hours or job location is not enough to result in an adverse employment action under the facts presented in this case.¹³ In the absence of an adverse employment action, the grievant's challenge to his reassignment does not qualify for a hearing.

Moreover, even assuming that the grievant has raised a question as to whether the transfer was an adverse employment action, he has not presented information to show that the agency misapplied and/or unfairly applied policy. The agency has indicated that it conducted focus groups at the grievant's former facility to determine operational needs at the facility. Several managers, including the grievant, were reassigned to different facilities based on the

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 Holland*, 487 F.3d at 219 (citation omitted).

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.

¹³ *See, e.g., EDR Ruling Nos. 2016-4203, 2016-4206; EDR Ruling No. 2015-3946.*

business needs identified as part of that process. In addition, EEDR has found no mandatory policy provision that the agency has violated by reassigning the grievant to another facility, and the grievant had identified none. Indeed, the agency's Operating Procedure 102.2, *Recruitment, Selection, and Appointment*, authorizes management to initiate non-competitive transfers of employees "based on DOC operational needs . . . from one position to another where the job title is the same."¹⁴ While the grievant may disagree with the agency's decision to transfer him to a different facility, he has not raised a question as to whether the agency misapplied and/or unfairly applied policy, acted in a manner that was inconsistent with other decisions regarding the reassignment of employees, or was otherwise arbitrary or capricious. In summary, it appears that the agency's decision to reassign the grievant to another facility is consistent with the discretion granted by policy. Accordingly, the grievance does not qualify for hearing on this basis.

EEDR's qualification rulings are final and nonappealable.¹⁵



Christopher M. Grab
Director
Office of Equal Employment and Dispute Resolution

¹⁴ Department of Corrections Operating Procedure 102.2, *Recruitment, Selection, and Appointment*, § IV(D)(2). DHRM Policy 3.05, *Compensation*, similarly defines a "Reassignment Within The Pay Band" as an "[a]ction of agency management to move an employee from one position to a different position in the same Role or Pay Band," and further provides that, due to operational business needs, agencies may require the movement of staff to different positions within the same salary range, in either the same or a different role.

¹⁵ Va. Code § 2.2-1202.1(5).