

Issue: Qualification – Management Actions (non-disciplinary transfer); Ruling Date:  
May 23, 2018; Ruling No. 2018-4724; 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 2018-4724  
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 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 would be transferred to a different facility as part of an effort to “change the leadership” of his former facility. The grievant filed a grievance alleging that the reassignment was “punitive, arbitrary, inconsistent with practices and unfair . . . .”<sup>1</sup> The grievant further contends that he was reassigned to a facility that is not within commuting distance of his home, and that another employee who is younger and has fewer years of service was reassigned to a closer facility. The grievant subsequently retired from employment with the agency as of May 1, 2018.<sup>2</sup> 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.<sup>3</sup> Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.<sup>4</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> 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 prior to his retirement, he may have been eligible for such reimbursement pursuant to the agency’s Operating Procedure 240.2, *Moving and Relocation Expenses*.

<sup>3</sup> See *Grievance Procedure Manual* § 4.1.

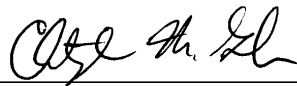
<sup>4</sup> Va. Code § 2.2-3004(B).

whether discrimination, retaliation, or discipline may have improperly influenced management's decision, or whether state policy may have been misapplied or unfairly applied.<sup>5</sup>

EEDR has further recognized that, even if a grievance challenges a management action that might qualify for a hearing, there are some cases where qualification is inappropriate. 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.

In this case, EEDR finds that a hearing officer would be unable to award any meaningful relief under the grievance procedure. Without deciding whether the grievant has raised a sufficient question as to whether the agency misapplied and/or unfairly applied policy by reassigning him to another facility, events that happened after the grievant initiated the grievance have rendered his claims regarding the transfer moot. The grievant retired from employment with the agency as of May 1, 2018. At a hearing about this grievance, a hearing officer would have the authority to order the agency to reapply policy correctly in assessing whether, and to where, the grievant should be reassigned.<sup>6</sup> Even if the grievant were able to establish that the agency's decision to transfer him to another facility was inconsistent with state and/or agency policy, the relief available through the grievance process would be meaningless, as the grievant is no longer employed by the agency. EEDR does not generally grant qualification for a grievance hearing to determine whether an agency properly applied state and/or agency policy where, as here, a direction from a hearing officer to reapply policy correctly would have no effect because the grievant no longer works for the agency. Accordingly, the grievance is not qualified and will not proceed further.

EEDR's qualification rulings are final and nonappealable.<sup>7</sup>



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Office of Equal Employment and Dispute Resolution

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

<sup>6</sup> *See Rules for Conducting Grievance Hearings* § VI(C)(1).

<sup>7</sup> Va. Code § 2.2-1202.1(5).