

Issue: Qualification – Work Conditions (physical, safety, security); Ruling Date: June 7, 2018; Ruling No. 2018-4729; 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 2018-4729  
June 7, 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 her January 3, 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 at one of the agency’s facilities as a Corrections Officer. On or about January 3, 2018, she initiated a grievance with the agency, alleging that she “was a victim of negligence or gross negligence by supervision” at her facility based on an incident where she was allegedly “assaulted in the control booth” by an offender. The grievant contends that “[a]n offender threw scalding hot water on [her]” and she “was not relieved until some nine hours later” to receive medical attention. As relief, the grievant requests “[a] written explanation of how this was allowed to happen, to know what actions will be taken and a transfer to another facility.” During the management steps, the agency informed the grievant that it was not aware she needed medical attention because she did not log what had happened in the logbook or otherwise report the incident to management during her shift. 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>1</sup> Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.<sup>2</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

---

<sup>1</sup> See *Grievance Procedure Manual* § 4.1.

<sup>2</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>3</sup>

Further, the grievance procedure generally limits grievances that qualify to those that involve "adverse employment actions."<sup>4</sup> 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."<sup>5</sup> Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one's employment.<sup>6</sup>

In this case, the grievant alleges that she notified management "that water had been thrown on her" by an offender and that, "although [she] did not use the phrase hot water, [she] did make it clear that it burned." The grievant asserts that she "should have been given ample opportunity to be checked by medical" when she reported the incident, and that she "should not have had to wait nine hours" for treatment. During the management steps, the agency noted that it had investigated the incident and determined the grievant did not report her injuries to management during her shift. The agency's logbook for the day also contains no record of the incident. Based on the information provided by the agency, it appears the grievant received medical attention when management became aware that she had been injured.

Even assuming the alleged actions by the offender and/or the agency could be considered an adverse employment action, EEDR has found no mandatory policy provision that the agency may have violated in responding to the incident, and the grievant has identified none. In addition, EEDR has recognized that there are certain circumstances where qualification for a hearing is not appropriate. For example, during the resolution steps an issue may have become moot, either because 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. Qualification may be also inappropriate where the hearing officer does not have the authority to grant the relief requested by the grievant and no other effectual relief is available. Here, the agency has represented that it took action to address the issue with the offender and with management personnel at the facility. Further, the grievant appears to have received medical attention after the incident when management became aware of her need for treatment. It is unclear what additional relief a hearing officer would be able to order under the circumstances presented in this case.<sup>7</sup> Because this appears to be a case in which a hearing officer could not provide the grievant with any further effectual relief, it would be of little or no use to either party to qualify the grievance for a

---

<sup>3</sup> *Id.* § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).

<sup>4</sup> *See Grievance Procedure Manual* § 4.1(b).

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

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

<sup>7</sup> When there has been a misapplication of policy, a hearing officer could order that the agency reapply policy correctly. *See Rules for Conducting Grievance Hearings* § VI(C)(1). Although the grievant seeks "[a] written explanation of how this was allowed to happen, to know what actions will be taken and a transfer to another facility," these are not forms of relief that could be awarded by a hearing officer here. *See Grievance Procedure Manual* §§ 5.9(a), (b).

hearing. Accordingly, and for all the reasons discussed above, this grievance does not qualify for a hearing.<sup>8</sup>

EEDR's qualification rulings are final and nonappealable.<sup>9</sup>



---

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

---

<sup>8</sup> This ruling does not mean that EEDR deems the alleged actions by the offender and/or the agency, if they occurred as described by the grievant, to be appropriate; only that this grievance does not qualify for a hearing based on the information presented to EEDR.

<sup>9</sup> See Va. Code § 2.2-1202.1(5).