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## QUALIFICATION RULING

In the matter of the Department of Corrections  
Ruling Number 2019-4885  
April 1, 2019

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”)<sup>1</sup> at the Department of Human Resource Management on whether her January 4, 2019 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 filed a grievance with the agency on January 4, 2019, seeking to be transferred to a different facility closer to her home. She has sought such a lateral transfer recently and in the past, to no avail. She has also applied for vacant positions that would enable her to move laterally to a preferred location, but she has not been successful in those processes either. The grievant states that she has been treated “unfairly” and “poorly” in the denial of her transfer requests. After proceeding through the management steps, the grievance was not qualified for a hearing by the agency head. The grievant now appeals that determination 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.<sup>2</sup> Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.<sup>3</sup> 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

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<sup>1</sup> The Office of Equal Employment and Dispute Resolution has separated into two office areas: the Office of Employment Dispute Resolution and the Office of Equity, Diversity, and Inclusion. While full updates have not yet been made to the *Grievance Procedure Manual* to reflect this change, this Office will be referred to as “EDR” in this ruling. EDR’s role with regard to the grievance procedure remains the same.

<sup>2</sup> See *Grievance Procedure Manual* § 4.1.

<sup>3</sup> Va. Code § 2.2-3004(B).

decision, whether state policy may have been misapplied or unfairly applied or whether a performance evaluation was arbitrary and/or capricious.<sup>4</sup> In this case, the grievant has not identified any qualifiable issue of discrimination or retaliation.<sup>5</sup> Accordingly, this case will be assessed as a misapplication or unfair application of state or agency policy.

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve “adverse employment actions.”<sup>6</sup> Thus, typically, a 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>7</sup> Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one’s employment.<sup>8</sup>

In her grievance, the grievant challenges the denial of a lateral transfer. Even assuming, for purposes of this ruling only, that an adverse employment action has occurred, the grievance does not raise a sufficient question as to any matter that qualifies for hearing under the grievance procedure. The grievance procedure accords much deference to management’s exercise of judgment, including a discretionary decision like a lateral transfer request. Thus, a grievance that challenges an agency’s action like the denied transfer in this case does not qualify for a hearing unless there is sufficient evidence that the resulting determination was plainly inconsistent with other similar decisions by the agency or that the assessment was otherwise arbitrary or capricious.<sup>9</sup> Having thoroughly reviewed the grievance, EDR has not identified any information to suggest that may have been the case here, or that there was any misapplication or unfair application of the agency’s policy on lateral transfers that would qualify for a hearing. Accordingly, the grievance does not raise a sufficient question as to whether the agency misapplied and/or unfairly applied policy, and does not qualify for a hearing on this basis.

EDR’s qualification rulings are final and nonappealable.<sup>10</sup>



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<sup>4</sup> *Id.* § 2.2-3004(A); *Grievance Procedure Manual* § 4.1(b), (c).

<sup>5</sup> While the grievant claims that she has been “discriminated” against, she has not identified any protected status on which the denial of transfer may have been based.

<sup>6</sup> *See Grievance Procedure Manual* § 4.1(b).

<sup>7</sup> *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

<sup>8</sup> *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007) (citation omitted).

<sup>9</sup> *See Grievance Procedure Manual* § 9 (arbitrary or capricious is defined as a decision made “[i]n disregard of the facts or without a reasoned basis”).

<sup>10</sup> Va. Code § 2.2-1202.1(5).