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QUALIFICATION RULING

In the matter of the Department of Corrections
Ruling Number 2019-4893
April 16, 2019

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”)¹ at the Department of Human Resource Management on whether her January 13, 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

On or about January 13, 2019, the grievant initiated a grievance with the agency claiming that she was being denied a salary increase. The grievant states that a letter sent by the agency head on June 15, 2018 indicated that “Correctional Officers” and “Correctional Officers Senior” would receive a salary increase effective January 10, 2019. This increase was provided by the General Assembly through the state government budget. The agency has responded that the grievant is not entitled to the salary increase because she is a Corrections Sergeant, classified as a Security Officer IV in Pay Band 4. 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.² Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.³ Claims relating to issues such as the establishment or revision of salaries generally do not qualify for a hearing, unless the grievant presents evidence raising a sufficient question as to whether discrimination, retaliation, or

¹ 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.

² See *Grievance Procedure Manual* § 4.1.

³ Va. Code § 2.2-3004(B).

discipline may have improperly influenced management's decision, or whether state policy may have been misapplied or unfairly applied.⁴ The grievant does not raise any issue regarding discrimination, retaliation, or discipline. Accordingly, the grievance will be assessed as to whether there has been a misapplication and/or unfair application of policy.⁵

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions."⁶ 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."⁷ Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one's employment.⁸

The grievant's claims appear to be that, since she is a "Security Officer IV," she is entitled to the January 10, 2019 salary increase available to "Correctional Officers" as stated in the agency head's memo. However, the grievant's argument is incorrect. The salary increase granted by the General Assembly in the budget was only provided to Correctional Officers and Correctional Officers Senior (in Pay Bands 2 and 3, respectively). As a Pay Band 4 Corrections Sergeant, the grievant is not eligible for this particular salary increase. Accordingly, the agency's action has been appropriate and there is no basis to qualify the grievance for a hearing.

EDR's qualification rulings are final and nonappealable.⁹



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

⁵ In her appeal package to EDR, the grievant also cites to certain procedural errors that occurred during the steps of her grievance. Section 6.3 of the *Grievance Procedure Manual* provides: "All claims of noncompliance should be raised immediately. By proceeding with the grievance after becoming aware of a procedural violation, one generally forfeits the right to challenge the noncompliance at a later time." The grievant could have raised her procedural concerns during the management resolution steps of her grievance, but apparently chose not to do so. Accordingly, EDR finds that any such procedural issues have been waived and they will not be addressed in this ruling.

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 Va. Code § 2.2-1202.1(5).