Issue: Qualification – Work Conditions (supervisory conflict); Ruling Date: July 13, 2018; Ruling No. 2018-4745; Agency: Department of Agriculture and Consumer Services; 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 Agriculture and Consumer Services
Ruling Number 2018-4745
July 13, 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 April 25, 2018 grievance with the Department of Agriculture and Consumer Services (the "agency") qualifies for a hearing. For the reasons discussed below, this grievance does not qualify for hearing.

FACTS

On or about April 25, 2018, the grievant initiated a grievance, alleging that his supervisor has engaged in behavior that is harassing, retaliatory, and discriminatory, overall creating a hostile work environment. After proceeding through the management steps, the agency head declined to qualify the grievance for a hearing. 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.[1] Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.[2] 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 whether discrimination, retaliation, or discipline may have improperly influenced management's decision, or whether state policy may have been misapplied or unfairly applied.[3]

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions."[4] Thus, typically, the threshold question is whether the grievant has suffered an adverse employment action. An adverse employment action

[1] *See Grievance Procedure Manual.* § 4.1.
[2] Va. Code § 2.2-3004(B).
[3] *Id.* § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).
[4] *See Grievance Procedure Manual* § 4.1(b).

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."[5] Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one's employment.[6]

In this case, the grievant alleges that his supervisor has engaged in behavior that has created a hostile work environment. For a claim of hostile work environment or workplace harassment to qualify for a hearing, the grievant must present evidence raising a sufficient question as to whether the conduct at issue was (1) unwelcome; (2) based on a protected status or prior protected activity[7]; (3) sufficiently severe or pervasive so as to alter the conditions of employment and to create an abusive or hostile work environment; and (4) imputable on some factual basis to the agency.[8] In the analysis of such a claim, the "adverse employment action" requirement is satisfied if the facts raise a sufficient question as to whether the conduct at issue was sufficiently severe or pervasive so as to alter the conditions of employment and to create and abusive or hostile work environment.[9] "[W]hether an environment is 'hostile' or 'abusive' can be determined only by looking at all the circumstances. These may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance."[10]

In general, the grievant argues that the supervisor is abusing her authority via her expectations of the grievant and his work unit. In support of his argument, he has attached documentation to his grievance consisting of emails from his supervisor setting forth her expectations of his work performance, which he describes as harassment. While the grievant may be raising legitimate concerns about his employment and the supervisor's conduct, EEDR has reviewed the facts presented by the grievant, and cannot find that the grieved management actions rose to a sufficiently severe or pervasive level to create an abusive or retaliatory hostile work environment. The alleged workplace harassment challenged by the grievant essentially involves the assignment of work assignments and setting of expectations and productivity measures, rather than severe or pervasive conduct that would contribute to a hostile work environment.[11] Furthermore, prohibitions against harassment do not provide a "general civility code" or prevent all offensive or insensitive conduct in the workplace.[12] Because the grievant has not raised a sufficient question as to the existence of a severe or pervasive hostile work environment, the grievance does not qualify for a hearing on this basis.

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[5] Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 761 (1998).
[6] Holland v. Wash. Homes, Inc., 487 F.3d 208, 219 (4th Cir. 2007) (citation omitted).
[7] The grievant states that he has complained about "workplace racial discrimination and bullying," but then goes on to state that he is "not trying to address [those issues] through this grievance."
[8] *See* Gilliam v. S.C. Dep't of Juvenile Justice, 474 F.3d 134, 142 (4th Cir. 2007).
[9] *See generally id.* at 142-43.
[10] Harris v. Forklift Sys., Inc., 510 U.S. 17, 23 (1993).
[11] *See generally* EDR Ruling No. 2012-3125 (and authorities cited therein).
[12] Faragher v. City of Boca Raton, 524 U.S. 775, 788 (1998) ("[C]onduct must be extreme to amount to a change in the terms and conditions of employment . . . ."); *see* Hopkins v. Balt. Gas & Elec. Co., 77 F.3d 745, 754 (4th Cir. 1996).

This ruling does not mean that EEDR deems any of the alleged behavior of the supervisor, if true, to be appropriate, only that the grievant's claim of workplace harassment does not qualify for a hearing. Moreover, this ruling in no way prevents the grievant from raising these matters again at a later time if the alleged conduct continues or worsens.

CONCLUSION

For the foregoing reasons, the grievant's request for qualification of his grievance for hearing is denied. EEDR's qualification rulings are final and nonappealable.[13]

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Director
Office of Equal Employment and Dispute Resolution

[13] Va. Code § 2.2-1202.1(5).