

Issue: Qualification – Management Actions (assignment of duties); Ruling Date: July 27, 2018; Ruling No. 2019-4758; 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 2019-4758
July 27, 2018

The grievant has requested a ruling on whether his February 14, 2018 grievance with the Department of Agriculture and Consumer Services (the agency) qualifies for a hearing. For the reasons discussed below, the Office of Equal Employment and Dispute Resolution (EEDR) at the Virginia Department of Human Resource Management (DHRM) finds that this grievance does not qualify for a hearing.

FACTS

On February 14, 2018, the grievant initiated a grievance challenging allegedly unfair treatment he receives from his supervisor, including his work schedule and the lack of promotional opportunities made available to him. The grievant claims that another employee in the same position is assigned various tasks that will enhance his knowledge and experience, while the grievant is not given equivalent opportunities. He also argues that he is required to work every Friday before a livestock sale, while the other employee does not, and his supervisor refused to allow the two to rotate the Friday work schedule. 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

¹ See *Grievance Procedure Manual* §§ 4.1 (a), (b).

² See Va. Code § 2.2-3004(B).

³ *Id.* § 2.2-3004(A); *Grievance Procedure Manual* § 4.1(c).

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve “adverse employment actions.”⁴ 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.”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 instance, the grievant alleges that his supervisor treats him unfairly, improperly favoring other employees in providing them with more desirable work assignments and schedules. To this, the agency points out that the grievant has in fact attended or been given the opportunity to attend several promotional trips. Further, the agency asserts that schedules are fairly administered among employees, and all employees must work the schedule and hours that fit the needs of the agency, including on weekends and holidays. Based upon EEDR’s review of the grievance packet, there is no indication that the grievant has experienced any significant effect that would rise to the level of an adverse employment action. To the extent that the grievant also argues that his supervisor engaged in a pattern of behavior that could constitute workplace harassment, based on a review of the facts as stated in his grievance, we cannot find that the grieved issues rose to a sufficiently “severe or pervasive” level such that an unlawfully abusive or hostile work environment was created.⁷ Thus, the grievance does not qualify for a hearing on this basis.

EEDR’s qualification rulings are final and nonappealable.⁸



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⁴ See *Grievance Procedure Manual* § 4.1(b).

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

⁶ See, e.g., *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007) (citation omitted).

⁷ See generally *Gilliam v. S.C. Dep’t of Juvenile Justice*, 474 F.3d 134, 142 (4th Cir. 2007).

⁸ Va. Code § 2.2-1202.1(5).