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QUALIFICATION RULING

In the matter of the Virginia Department of Juvenile Justice
Ruling Number 2022-5311
November 17, 2021

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Virginia Department of Human Resource Management (“DHRM”) on whether her April 16, 2021 grievance with the Virginia Department of Juvenile Justice (the “agency”) qualifies for a hearing. For the reasons discussed below, the grievance is not qualified for a hearing.

FACTS

On or about April 16, 2021, the grievant filed a grievance alleging that she had been experiencing a “hostile work environment, lack of support in ensuring a hostile-free work environment by administration and unfairness.” She alleged that continued discord with her coworker led to a verbal altercation on April 7, 2021 during a meeting regarding an agency resident’s treatment plan. The grievant was an agency employee for five years¹ and worked closely with the coworker for three years.

For instance, the grievant alleged that her coworker refused to include her in pertinent emails about residents, refused to alert the grievant when she would be out of the office, and laughed at her during a resident’s treatment plan meeting.² As relief, the grievant sought for the “administration to address reported issues of hostile work environment done by [her coworker].” According to the grievant, no action was taken to remedy this matter until she filed a grievance regarding the April 7, 2021 incident.

Following the management resolution steps, the agency declined to qualify the grievance for a hearing, stating that supervisory staff would attend weekly and biweekly meetings involving the grievant and the coworker and concluding that, since the coworker “acknowledged her inappropriate behavior,” “appropriate action was taken in accordance with [DHRM] Policy 1.60,

¹ The grievant has informed EDR that she resigned from her position and that her last day of employment was October 11, 2021.

² EDR has carefully reviewed all of the grievant’s allegations regarding her coworker, her work responsibilities, and agency management. To the extent that this ruling does not specifically address certain allegations, the omission does not reflect that EDR failed to consider such allegations but rather that their effect on EDR’s analysis was merely cumulative.

Standards of Conduct.” The grievant now appeals the agency’s qualification 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.³ Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.⁴ Thus, claims relating to issues such as the means, methods, 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.⁵

Further, while grievances that allege retaliation or other misapplication of policy may qualify for a hearing, the grievance procedure generally limits grievances that qualify to those that involve “adverse employment actions.”⁶ Typically, then, 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.”⁷ Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one’s employment.⁸ Workplace harassment rises to this level if it includes conduct that is “sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment.”⁹

The grievant alleged that she worked in a “hostile work environment, lack of support in ensuring a hostile-free work environment by administration and unfairness.” Although DHRM Policy 2.35, *Civility in the Workplace*, prohibits workplace harassment¹⁰ and bullying,¹¹ alleged violations must meet certain requirements to qualify for a hearing. Whether discriminatory or non-discriminatory, harassment or bullying may qualify for a hearing as an adverse employment action if the grievant presents evidence that raises a sufficient question whether the conduct was (1) unwelcome; (2) sufficiently severe or pervasive that it alters the conditions of employment and

³ See *Grievance Procedure Manual* § 4.1.

⁴ Va. Code § 2.2-3004(B).

⁵ *Id.* § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).

⁶ Va. Code § 2.2-3004(A); 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 *Strothers v. City of Laurel*, 895 F.3d 317, 331 (4th Cir. 2018) (citing *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57 (1986)).

¹⁰ Traditionally, workplace harassment claims were linked to a victim’s protected status or protected activity. However, DHRM Policy 2.35 also recognizes non-discriminatory workplace harassment, defined as “[a]ny targeted or directed unwelcome verbal, written, social, or physical conduct that either denigrates or shows hostility or aversion towards a person not predicated on the person’s protected class.”

¹¹ DHRM Policy 2.35 defines bullying as “[d]isrespectful, intimidating, aggressive and unwanted behavior toward a person that is intended to force the person to do what one wants, or to denigrate or marginalize the targeted person.” The policy specifies that bullying behavior “typically is severe or pervasive and persistent, creating a hostile work environment.”

creates an abusive or hostile work environment; and (3) imputable on some factual basis to the agency.¹² As to the second element, the grievant must show that they perceived, and an objective reasonable person would perceive, the environment to be abusive or hostile.¹³

In support of her grievance, the grievant stated that the friction between her and her coworker had been going on for three years. The grievant stated that she requested support from supervisors and administrators to resolve the issues between them and “they did nothing.” On April 7, 2021, the grievant, her coworker and other colleagues attended a virtual meeting to discuss a resident’s treatment plan. The grievant asked the coworker a question regarding the resident’s treatment plan and there was no response from the coworker “for about two minutes.”¹⁴ After some troubleshooting took place to make sure everyone was properly connected, the grievant stated that she dissented to the coworker’s proposed treatment plan. The coworker “began to laugh” and “stopped herself” from laughing. The grievant expressed that it was “unprofessional of [the coworker] to start laughing during the middle of a . . . discussion.” The coworker responded: “Sorry if my laughing hurt your feelings.” The grievant replied, “my personal feelings and my professionalism are two different things,” and the coworker answered that “when someone apologizes that is the end of it and it is done.” Their disagreement continued to escalate until the grievant decided that she “was disengaging from this conversation” and left to complete an incident report. In addition, two other colleagues completed incident reports that closely mirrored the grievant’s version of what had transpired. When she reported the April 7, 2021 incident to management, the grievant stated that she was not contacted “until a week later.”

The grievant has expressed frustration with the agency’s approach to these issues, stating “they did nothing” and she felt “unprotected.” The grievant shared that she worked with her coworker for three years and that they had a “strained relationship from the beginning.” She said that when she disagreed with her coworker in meetings,¹⁵ her coworker became upset and said that the grievant “was challenging her expertise,” and the coworker would walk out of meetings. The grievant stated that the coworker never apologized about the April 7, 2021 incident. Documentation provided by the agency states that the coworker “did go to [the grievant] and was able to apologize sincerely.” However, the grievant was adamant that the coworker never apologized sincerely and the coworker told the grievant that she “was making a big deal over nothing.” She added that no one followed up with her to verify that she did receive an apology. The grievant states that after working for the agency for five years, she decided to resign in October

¹² See *Gilliam v. S.C. Dep’t of Juvenile Justice*, 474 F.3d 134, 142 (4th Cir. 2007).

¹³ *Freeman v. Dal-Tile Corp.*, 750 F.3d 413, 421 (4th Cir. 2014) (citing *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21-23 (1993)); see DHRM Policy Guide – Civility in the Workplace (“A ‘reasonable person’ standard is applied when assessing if behaviors should be considered offensive or inappropriate.”). “[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.” *Harris*, 510 U.S. at 23 (1993); see, e.g., *Parker v. Reema Consulting Servs.*, 915 F.3d 297, 304-05 (4th Cir. 2019) (finding that a false rumor that an employee was promoted for sleeping with a manager altered the conditions of her employment because the employee was blamed for the rumor and told she could not advance in the company because of it); *Strothers*, 895 F.3d at 331-32 (holding that a hostile work environment could exist where a supervisor overruled the employee’s bargained-for work hours, humiliated the employee for purportedly violating the dress code, required her to report every use of the restroom, and negatively evaluated her based on perceived slights).

¹⁴ The meeting was held virtually via Google Meet so there may have been technical difficulties.

¹⁵ The grievant and her coworker would meet to discuss planning and development for the children and they would interact regularly.

2021. She indicated that human resources placed her on paid administrative leave and did not require her to finish her last two weeks. She described the agency's action as "punitive" and felt that she was placed on leave because of two other outstanding grievances.

Although the grievant may have been understandably frustrated by the workplace interactions she has alleged, as described above, the grievant is no longer employed by the agency. Because of this change to the grievant's employment, a hearing officer would be unable to provide any effective relief if her April 16, 2021 grievance were qualified for a hearing. A hearing officer does not have authority to issue disciplinary action against another employee.¹⁶ If a hearing officer were to find that the grievant's work environment was indeed hostile, the hearing officer could order, for example, the agency to create an environment free of discrimination and retaliation.¹⁷ However, because the grievant is no longer employed with the agency, effectual relief is not possible. Accordingly, the April 16, 2021 grievance does not qualify for hearing under the grievance procedure.

CONCLUSION

For the reasons described above, the April 16, 2021 grievance does not contain claims for which relief could be granted by a hearing officer. As such, the grievance does not qualify for a hearing under the grievance procedure at this time.¹⁸ This ruling only determines that the grievance does not qualify for a hearing and does not determine that any of the claims asserted were invalid.

EDR's qualification rulings are final and nonappealable.¹⁹

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¹⁶ *Grievance Procedure Manual* § 5.9(b).

¹⁷ *Rules for Conducting Grievance Hearings* § VI(C)(3).

¹⁸ *See Grievance Procedure Manual* § 4.1.

¹⁹ *See Va. Code* § 2.2-1202.1(5).