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## QUALIFICATION AND CONSOLIDATION RULING

In the matter of the University of Virginia  
Ruling Numbers 2022-5338, 2022-5339  
January 13, 2022

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether his October 14, 2021 grievance with the University of Virginia (the “university”) qualifies for a hearing. For the reasons discussed below, this grievance does not qualify for a hearing. This ruling also addresses the consolidation of the grievant’s November 4, 2021 and November 22, 2021 grievances filed with the university.

### FACTS

On or about October 14, 2021, the grievant initiated a grievance with the university challenging its denial of his request for a religious accommodation from vaccine requirements. The university later issued to the grievant a Group III Written Notice with a 10-workday suspension on November 4, 2021 and a Group III Written Notice with termination on November 18. Both Written Notices charge the grievant with violating a safety rule for failing to meet the university’s COVID-19 vaccination requirement. The grievant initiated two grievances on November 4 and November 22, respectively, separately challenging the two Written Notices. Both of those grievances have been qualified for hearing.

The parties agreed to waive the management steps for the October 14, 2021 grievance and seek a qualification ruling from EDR to determine whether that grievance may proceed to hearing. Both parties have further requested consolidation of all qualified matters for a single hearing.

### DISCUSSION

#### *Qualification*

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>1</sup> Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the

<sup>1</sup> See *Grievance Procedure Manual* § 4.1.

affairs and operations of state government.<sup>2</sup> 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 or agency policy may have been misapplied or unfairly applied.<sup>3</sup>

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions."<sup>4</sup> Thus, typically, 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."<sup>5</sup> Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one's employment.<sup>6</sup>

In his October 14, 2021 grievance, the grievant essentially challenges the university's denial of his request for a religious accommodation from vaccine requirements.<sup>7</sup> The grievant alleges that he experienced problems with the university's online system for requesting a vaccine exemption, that he has not received a clear explanation from the university about its reason for the denial or responses to his questions about the denial, and that his request for accommodation is based on a sincere religious belief. The grievant further expresses concern that the university has unfairly denied his accommodation request for "unfair and/or malicious reasons." Although the grievant's concerns about his religious accommodation request are understandable, EDR cannot conclude that impact of the university's denial was, in itself and as described in the grievance, an adverse employment action under the facts of this case. The grievant has not presented evidence to indicate that any of the management actions described in the October 14 grievance had an adverse impact on the terms, conditions, or benefits of his employment at the time the grievance was filed. For example, the university had not taken any corrective action against the grievant (such as formal discipline or termination); significantly, he has filed two separate grievances challenging his receipt of two Group III Written Notices that were later issued for his alleged violation of a safety rule for failing to comply with the university's COVID-19 vaccination requirement. Both of those grievances will proceed to hearing.

Accordingly, the October 14, 2021 grievance does not qualify for a hearing. However, as described further below, the grievant may present his allegations concerning the university's denial of his request for religious accommodation at the hearing on his November 4 and November 22 grievances, to the extent the hearing officer determines such matters are relevant.

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<sup>2</sup> Va. Code § 2.2-3004(B).

<sup>3</sup> *Id.* § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).

<sup>4</sup> *See Grievance Procedure Manual* § 4.1(b).

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

<sup>6</sup> *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007) (citation omitted).

<sup>7</sup> The grievant's claims primarily concern the university's current requirement that employees be vaccinated against COVID-19, though he also describes issues with a previous flu vaccine exemption from 2020 that he believes the university improperly withdrew.

*Consolidation*

Approval by EDR in the form of a compliance ruling is required before two or more grievances may be consolidated in a single hearing. Moreover, EDR may consolidate grievances for hearing without a request from either party.<sup>8</sup> EDR strongly favors consolidation and will consolidate grievances when they involve the same parties, legal issues, policies, and/or factual background, unless there is a persuasive reason to process the grievances individually.<sup>9</sup>

EDR finds that consolidation of the grievant's November 4, 2021 and November 22, 2021 grievances is appropriate. These grievances involve the same grievant and could share common themes, claims, and witnesses. The grievances relate to conduct by the grievant that resulted in similar and/or related disciplinary actions issued. Further, we find that consolidation is not impracticable in this instance. Therefore, the two grievances are consolidated for a single hearing.<sup>10</sup>

CONCLUSION

For the reasons expressed in this ruling, the facts presented by the grievant in his October 14, 2021 grievance do not constitute a claim that qualifies for a hearing under the grievance procedure.<sup>11</sup> However, as described above, the grievant filed two additional grievances on November 4 and November 22 challenging his receipt of two Group III Written Notices for his alleged failure to comply with the university's COVID-19 vaccination requirement. The October 14 grievance challenges the university's denial of his request for a religious exemption, and thus describes concerns related to the university's basis for issuing discipline. EDR will therefore include a copy of the October 14 grievance with the appointment file for the November 4 and November 22 grievances to ensure any arguments raised in the October 14 grievance that are relevant to the challenged Written Notices will be before the hearing officer for consideration.

The parties will receive further correspondence from EDR regarding the appointment of a hearing officer for the qualified grievances challenging the Group III Written Notices issued on November 4 and November 18.

EDR's qualification rulings are final and nonappealable.<sup>12</sup>

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<sup>8</sup> *Grievance Procedure Manual* § 8.5.

<sup>9</sup> *See id.*

<sup>10</sup> Pursuant to the fee schedule established by EDR's Hearings Program Administration policy, consolidated hearings shall be assessed a full fee for the first grievance and an additional half fee for the second grievance. *See* EDR Policy 2.01, *Hearings Program Administration*, Attach. B.

<sup>11</sup> *See Grievance Procedure Manual* § 4.1.

<sup>12</sup> Va. Code § 2.2-1202.1(5).