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**QUALIFICATION RULING**

In the matter of the Division of Capitol Police  
Ruling Number 2022-5348  
January 27, 2022

This ruling addresses the partial qualification of the grievant's November 8, 2021 grievance with the Division of Capitol Police (the "agency"). The grievant asserts, in part, that he was improperly issued a Group II Written Notice. The agency head qualified the grievant's challenge to the Group II Written Notice for a hearing, but declined to qualify unspecified claims presented in the grievance. The grievant has appealed the agency head's partial qualification of his grievance to the Office of Employment Dispute Resolution ("EDR") at the Department of Human Resource Management. For the reasons discussed below, we find that this grievance is qualified for a hearing in full.

FACTS

On October 22, 2021, the agency issued to the grievant a Group II Written Notice with a three-workday suspension for allegedly sleeping during work hours. The grievant initiated a grievance on November 8, 2021, listing four issues:

1. The allegations of sleeping are not founded nor backed by the evidence in the record.
2. [The s]everity of the punishment is not founded by nor backed by the evidence in the record.
3. Timeliness of the investigation was outside of policy . . . .
4. [The grievant] was not given the opportunity to defend [himself] against allegations made during the investigation, [he] did not review the case file until October 15, 2021, and was not given any information regarding the nature of the investigation prior to [his] being questioned . . . .

As relief, the grievant requested removal of the Group II Written Notice, restoration of the pay, benefits, and seniority he lost because of the unpaid suspension, a return to his previous shift, attorneys' fees, and "[a]n order that the agency comply with applicable law and policy."

Following the management resolution steps, the agency head qualified the grievant's challenges to the Written Notice "and assigned corrective action, (restoration of pay and leave)

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resulting from [the] suspension.” The agency head declined to qualify the “other issues” in the grievance. The grievant now appeals the agency head’s partial qualification decision 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.<sup>1</sup> Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the 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>

In this case, the grievant’s challenge to the Group II Written Notice has been qualified for a hearing, as required under the grievance procedure.<sup>4</sup> From EDR’s review of the grievance record, it is unclear what “other issues” were not qualified; they are not specifically identified in the qualification decision. It appears that these “other issues” may be the grievant’s allegations regarding the timeliness of the investigation and his opportunity to defend himself and review information during the investigation. These are the only other management actions identified as “issues” in the grievance.

The grievant has alleged that the evidence did not support the charge of sleeping during work hours and the level of discipline imposed, and that the agency’s investigation of the incident was not consistent with its policies. EDR thus understands the grievance to challenge both the substance of the alleged misconduct (*i.e.* whether the grievant was sleeping during work hours) and procedural concerns related to the issuance of the Written Notice (*i.e.* whether the level of offense and the agency’s investigation were consistent with applicable policy). As a result, we find that the grievant’s claims regarding the agency’s investigation of the incident are most appropriately considered theories<sup>5</sup> advanced in support of his challenge to the Written Notice itself. This conclusion is further supported by the relief the grievant has requested: removal of the Written Notice. Accordingly, we find that the “issues” relating to the investigation cannot be severed from the grievant’s qualified challenge to the Written Notice and may be raised at the hearing to support his position.<sup>6</sup> The grievance is therefore qualified for a hearing in full.

### CONCLUSION

Based on the discussion above, the grievance is qualified for a hearing in full. This qualification ruling in no way determines that the actions challenged by the grievant were in any way contrary to law or policy, but rather only determines that further exploration of the facts by a hearing officer is appropriate. Furthermore, should the grievant prevail on his challenge to the

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

<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> *Grievance Procedure Manual* § 4.1(a); see also Va. Code § 2.2-3004(A).

<sup>5</sup> As EDR has consistently ruled in the past, the “claims” or “issues” raised by a grievance are the management actions being challenged. See, e.g., EDR Ruling Nos. 2013-3480, 2013-3495; EDR Ruling Nos. 2007-1561, 2007-1587.

<sup>6</sup> See EDR Ruling Nos. 2018-4688 (and authorities cited therein).

Written Notice at the hearing, the relief available under the grievance procedure is limited to rescission or reduction of the disciplinary action and any associated restoration of pay and benefits.<sup>7</sup> At the hearing, the grievant will have the burden of proof as to any affirmative defenses, including those related to the agency's investigation of the incident and other matters relating to the substance of the charges against him.<sup>8</sup>

If it has not already done so, the agency is directed to submit a completed Form B to EDR within five workdays of this ruling. A hearing officer will be appointed in a forthcoming letter.

EDR's qualification rulings are final and nonappealable.<sup>9</sup>

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<sup>7</sup> *Rules for Conducting Grievance Hearings* § VI(A).

<sup>8</sup> *Id.* § VI(B)(1).

<sup>9</sup> Va. Code § 2.2-1202.1(5).