

Issue: Qualification – Discrimination (Race/Gender); Ruling Date: January 7, 2013;
Ruling No. 2013-3502; Agency: Department of Juvenile Justice; Outcome: Not
Qualified.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Employment Dispute Resolution

QUALIFICATION RULING

In the matter of the Department of Juvenile Justice
Ruling Number 2013-3502
January 7, 2012

The grievant has requested a ruling on whether his August 20, 2012 grievance with the Department of Juvenile Justice (“agency”) qualifies for a hearing. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

The grievant is employed as a Juvenile Correctional Officer at one of the agency’s facilities. His August 20, 2012 grievance alleges discriminatory treatment and workplace harassment based on race and gender. Following a resident’s report that the grievant had provided him with a razor, Lieutenant O sent an email to the grievant’s supervisor indicating that the grievant had provided this resident with a razor and failed to get it back. A subsequent review of the agency’s log book revealed that another employee had actually provided the resident with the razor, not the grievant, and the resident’s report was false. The grievant asserts that Lieutenant O concluded that grievant was at fault in this particular incident without any factual basis, but based instead on improper grounds, namely, his gender and race.

On or about August 20, 2012, the grievant initiated a grievance regarding this incident. As part of the management resolution steps, the agency asserts that it thoroughly reviewed the situation and took appropriate action to address it with the facility’s supervisors, as well as organized a meeting between Lieutenant O and the grievant to discuss the issues. The agency head ultimately declined to qualify the grievance for a hearing, and the grievant now appeals that 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.¹ Additionally, by statute and under the grievance procedure, management is reserved the exclusive right to manage the affairs and operations of state government.² Thus, claims relating

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

² See Va. Code § 2.2-3004(B).

to issues such as to 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 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, there is no evidence that the grievant has experienced any significant effects as a result of the initial accusation by Lieutenant O that would rise to the level of an adverse employment action. The agency asserts that at no time was the grievant disciplined for the false accusation against him, and no evidence was produced that would indicate otherwise. Consequently, this grievance does not qualify for a hearing.

EDR's qualification rulings are final and nonappealable.⁷



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

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

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

⁶ *Holland v. Washington Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007).

⁷ Va. Code § 2.2-1202.1(5).