

Issue: Qualification – Management Actions (Records Disclosure/Confidentiality);
Ruling Date: January 7, 2013; Ruling No. 2013-3507; Agency: University of Virginia
Medical Center; Outcome: Not Qualified.



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

QUALIFICATION RULING

In the matter of the University of Virginia Medical Center
Ruling Number 2013-3507
January 7, 2013

The grievant has requested a ruling on whether her November 3, 2012 grievance with the University of Virginia Medical Center (the agency) fully qualifies for a hearing. For the reasons discussed below, the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management finds that the issues in this grievance not qualified by the agency head do not qualify for a hearing.

FACTS

The grievant's November 3, 2012 primarily challenges her receipt of a Step 3 disciplinary process. That issue has been qualified for a hearing by the agency. However, the grievant also included a statement about a co-worker's comments about personnel actions related to other employees. In short, the grievant is challenging this co-worker's continued "gossiping" about confidential personnel matters allegedly related to that co-worker by a supervisory improperly. The agency has not qualified any issues raised in relation to these statements on the Grievance Form A and the grievant now appeals that determination.

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, or whether a performance evaluation was arbitrary or capricious.³

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

² See Va. Code § 2.2-3004(B).

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

Claims based upon a purported improper disclosure of confidential information may potentially advance to hearing as a misapplication of policy claim. However, 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.⁵ 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.”⁶ Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one’s employment.⁷ While the actions of the grievant’s co-worker and the supervisor, if true, may be inappropriate, there is no indication that the terms, conditions, or benefits of the grievant’s employment have been affected. Indeed, it is not clear whether the “gossiping” personally and directly related to the grievant at all.⁸ Therefore, this additional claim does not qualify for a hearing.

Further, there are some cases where qualification is inappropriate even if an agency has misapplied policy. For example, during the resolution steps, an issue may have become moot, either because the agency granted the specific relief requested by the grievant or an interim event prevents a hearing officer from being able to grant any meaningful relief. Additionally, qualification may be inappropriate where the hearing officer does not have the authority to grant the relief requested by the grievant and no other effectual relief is available.

Even though a hearing officer is not limited to the specific relief requested by the grievant,⁹ this is a case where further effectual relief is unavailable. When there has been a misapplication of policy, a hearing officer could order the agency to reapply policy correctly, which, as a practical matter would have little effect on a prior disclosure of personal information. In addition, hearing officers cannot order agencies to take corrective action against employees.¹⁰ Therefore, because a hearing officer could not provide the grievant with any further meaningful relief as to the additional claim, it is not qualified for hearing as part of her grievance.¹¹

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

⁵ While evidence suggesting that the grievant suffered an “adverse employment action” is generally required in order for a grievance to advance to hearing, certain grievances may proceed to hearing absent evidence of an “adverse employment action.” For example, consistent with recent developments in Title VII law, this Department substitutes a lessened “materially adverse” standard for the “adverse employment action” standard in retaliation grievances. See EDR Ruling No. 2007-1538.

⁶ *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

⁷ *Holland v. Washington Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007).

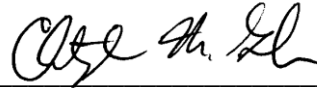
⁸ *Grievance Procedure Manual* § 2.4.

⁹ *Rules for Conducting Grievance Hearings* § VI(A).

¹⁰ See *Grievance Procedure Manual* § 5.9(b).

¹¹ No portion of this ruling is meant to diminish the seriousness of the allegations in this case, nor condone the alleged conduct of the supervisor, if it indeed occurred. Because a hearing officer would not be able to provide the grievant relief in this case, it provides little utility to either part to qualify the grievance for hearing.

EDR's qualification rulings are final and nonappealable.¹² The issues already qualified by the agency (namely the step 3 disciplinary action) will proceed to hearing. A hearing officer will be appointed in forthcoming correspondence.



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Office of Employment Dispute Resolution

¹² Va. Code § 2.2-1202.1(5).