

Issue: Qualification – Work Conditions (other); Ruling Date: June 11, 2013; Ruling No. 2013-3630; Agency: Department of Corrections; 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 Corrections
Ruling Number 2013-3630
June 11, 2013

The grievant has requested a ruling on whether his February 4, 2013 grievance with the Department of Corrections (the “agency”) qualifies for a hearing. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

The grievant is employed by the agency as a Counselor. He asserts that for the past several years he has been required to attend and monitor offender religious programs that are not in keeping with his religious affiliations or beliefs. On or about February 4, 2013, he initiated a grievance challenging this practice. After proceeding through the management steps, the agency head declined to qualify the grievance for a hearing. The grievant now appeals that determination to the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management.

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 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, whether state policy may have been misapplied or unfairly applied or whether a performance evaluation was arbitrary and/or capricious.³

Furthermore, 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

¹ See *Grievance Procedure Manual* § 4.1.

² Va. Code § 2.2-3004(B).

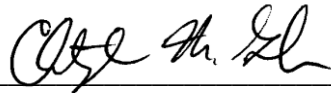
³ Va. Code § 2.2-3004(A); *Grievance Procedure Manual* § 4.1(b).

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

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, the grievant has not shown that he experienced an adverse employment action. He was required to monitor, but not participate in, religious services held for inmates of faiths different than the grievant’s own.⁷ Being required to perform a job duty of this nature does not constitute a significant change in employment status: the grievant was not disciplined or reassigned, and he suffered no adverse effect on his pay or benefits. Accordingly, this grievance does not qualify for a hearing.⁸

EDR’s qualification rulings are final and nonappealable.⁹



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Director
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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) (citation omitted).

⁷ Under agency policy, all religious services and group activities must be observed by agency personnel. At the grievant’s facility, counselors have been mandated to perform this duty.

⁸ See also Sanchez-Rodriguez v. AT&T Mobility P.R., Inc., 673 F.3d 1, 12 (1st Cir. 2012) (“We apply a two-part framework in analyzing religious discrimination claims under Title VII. First, the plaintiff must make [his] prima facie case that a bona fide religious practice conflicts with an employment requirement and was the reason for the adverse employment action. Once the plaintiff has established this prima facie case, the burden shifts to the [employer] to show that it made a reasonable accommodation of the religious practice or show that any accommodation would result in undue hardship”) (citations and internal quotation marks omitted).

⁹ See Va. Code § 2.2-1202.1(5).