

Issue: Qualification – Work Conditions (Employee/Supervisor Conflict); Ruling Date: February 19, 2014; Ruling No. 2014-3793; 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 Department of Corrections
Ruling Number 2014-3793
February 19, 2014

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) of the Department of Human Resource Management (“DHRM”) on whether her August 5, 2013 grievance with the Department of Corrections (the “agency”) qualifies for hearing. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

On or about August 5, 2013, the grievant initiated a grievance alleging harassment by her supervisors, particularly Captain D. As relief she seeks to be transferred to another facility.¹ After the agency failed to grant the requested relief in the course of the management steps, the grievant has now sought qualification of her grievance for hearing. The agency head denied the grievant’s initial request, and she has appealed 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.² Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.³ 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.⁴

The grievant appears to assert a claim that her supervisors created an ongoing hostile work environment through criticism, warnings regarding performance and conduct, and failing to

¹ During the course of the EDR investigation, the grievant also raised concerns regarding the agency’s alleged failure to transfer her to the day shift. As this issue does not appear to have been raised in the grievant’s August 5, 2013 grievance, it will not be considered here. See *Grievance Procedure Manual* § 2.4. However, if this issue continues, it could be something about which the grievant could initiate a new grievance.

² See *Grievance Procedure Manual* § 4.1.

³ Va. Code § 2.2-3004(B).


⁴ *Id.* § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).

provide adequate training. For a claim of a hostile work environment or harassment to qualify for a hearing, the grievant must present evidence raising a sufficient question as to whether the conduct at issue was (1) unwelcome; (2) based on a protected status or protected conduct; (3) sufficiently severe or pervasive so as to alter the conditions of employment and to create an abusive or hostile work environment; and (4) imputable on some factual basis to the agency.⁵ “[W]hether an environment is ‘hostile’ or ‘abusive’ can be determined only by looking at all the circumstances. These may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.”⁶

In this case, the grievant has failed to identify any protected status or conduct as the motive for the alleged harassment. Instead, she asserts that Captain D treated her in a harassing manner because the Captain and the Major at her facility were friends, and the Captain therefore took the grievant to the Major’s office rather than correcting or training the grievant herself. The grievant also makes general allegations of “favoritism” at the facility where she works. These assertions, without more, do not demonstrate a protected basis or status for purposes of establishing a claim of hostile work environment or harassment.⁷

Even in the event the grievant had identified a protected status or conduct, the conduct challenged is not, under the facts and circumstances present, so sufficiently severe or pervasive as to create a hostile work environment.⁸ The actions cited by the grievant appear primarily to be efforts to address concerns regarding the grievant’s performance and conduct. While the grievant may disagree with the necessity of these corrective measures and the manner in which they were taken, there is no indication that the terms, conditions, or benefits of the grievant’s employment were detrimentally impacted. Finally, it appears that even had an actionable hostile work environment been created by Captain D’s actions, the agency has now taken steps to prevent any continuing harm by reassigning the grievant to another supervisor. For these reasons, this grievance does not qualify for hearing.

EDR’s qualification rulings are final and nonappealable.⁹



Christopher M. Grab
Director
Office of Employment Dispute Resolution

⁵ See generally *White v. BFI Waste Servs., LLC*, 375 F.3d 288, 296-97 (4th Cir. 2004).

⁶ *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23 (1993).

⁷ See Executive Order No. 6 (2010); DHRM Policy 2.05, *Equal Employment Opportunity; Grievance Procedure Manual* § 4.1(b).

⁸ See *Gilliam v. S.C. Dep’t of Juvenile Justice*, 474 F.3d 134, 142 (4th Cir. 2007). As courts have noted, prohibitions against harassment, such as those in Title VII, do not provide a “general civility code,” *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998), or remedy all offensive or insensitive conduct in the workplace. See, e.g., *Beall v. Abbott Labs.*, 130 F.3d 614, 620-21 (4th Cir. 1997); *Hopkins v. Balt. Gas & Elec. Co.*, 77 F.3d 745, 754 (4th Cir. 1996).

⁹ Va. Code § 2.2-1202.1(5).