

Issues: Qualification – Discipline (other) and Work Conditions (other work condition);  
Ruling Date: April 15, 2014; Ruling No. 2014-3864, 2014-3865; 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 Numbers 2014-3864, 2014-3865  
April 15, 2014

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) on whether his two December 10, 2013 grievances with the Department of Corrections (“agency”) qualify for a hearing. For the reasons discussed below, these grievances do not qualify for a hearing.

FACTS

On December 10, 2013, the grievant initiated two grievances challenging the agency’s decision to proceed with one or more disciplinary meetings during a period when the grievant was on medical leave, the agency’s refusal to allow the grievant to have his attorney present for those meetings, and alleged withholding of information prior to a disciplinary meeting. The disciplinary process challenged in the grievant’s December 10, 2013 grievances resulted in the agency issuing two Written Notices with termination on March 14, 2014, which are the subject of a separate dismissal grievance, dated April 7, 2014.

After the parties failed to resolve the December 10, 2013 grievances during the management resolution steps, the grievant asked the agency head to qualify the grievances for hearing. The agency head denied the grievant’s request, and the grievant now seeks a qualification ruling by 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, by statute and under the grievance procedure, management is reserved the exclusive right to manage the affairs and operations of state government.<sup>2</sup> Thus, claims relating 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.

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

<sup>2</sup> See Va. Code § 2.2-3004(B).

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve “adverse employment actions.”<sup>3</sup> 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.”<sup>4</sup> Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one’s employment.<sup>5</sup>

In this case, the grievant challenges the agency’s advancement of the disciplinary process while he was on medical leave, the agency’s refusal to allow the grievant’s attorney to attend one or more disciplinary meetings, and the agency’s alleged withholding of information prior to a disciplinary meeting.<sup>6</sup> Although the Written Notices issued to the grievant at the conclusion of the disciplinary process constitute adverse employment actions, the actions challenged in the grievant’s December 10, 2013 grievances did not in themselves result in a significant change in employment status or a change in the terms, conditions, or benefits of his employment. As these acts do not satisfy the threshold requirement of an adverse employment action, they are not qualified for hearing.

EDR notes, however, that this ruling is limited to the narrow question of whether the December 10, 2013 grievances qualify for hearing and does not address whether the grievant received pre-disciplinary due process consistent with the requirements of the grievance procedure and state policy. The validity of the Written Notices issued by the agency will be determined at the hearing on the grievant’s April 7, 2014 dismissal grievance. To the extent the grievant argues that the agency failed to provide him with adequate pre-disciplinary due process prior to issuing the Written Notices, the grievant may raise those claims at the hearing on the April 7, 2014 dismissal grievance, subject to the discretion of the hearing officer.

EDR’s qualification rulings are final and nonappealable.<sup>7</sup>



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Christopher M. Grab  
Director  
Office of Employment Dispute Resolution

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<sup>3</sup> See *Grievance Procedure Manual* § 4.1(b).

<sup>4</sup> *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

<sup>5</sup> *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4<sup>th</sup> Cir. 2007).

<sup>6</sup> The grievances appear to claim that, in allegedly withholding information from the grievant, the agency failed to comply with the Virginia Freedom of Information Act (FOIA). EDR has no authority to enforce the provisions of FOIA; rather, a person denied the rights and privileges conferred by FOIA must seek enforcement of FOIA’s provisions in a court of law. See Va. Code § 2.2-3713(A). Accordingly, we will not address the grievant’s claim that the agency has failed to comply with FOIA in this ruling.

<sup>7</sup> Va. Code § 2.2-1202.1(5).