

Issue: Qualification – Discrimination (disability); Ruling Date: March 30, 2015; Ruling No. 2015-4117; Agency: Virginia Department of Transportation; Outcome: Not Qualified.



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

**QUALIFICATION RULING**

In the matter of the Virginia Department of Transportation  
Ruling Number 2015-4117  
March 30, 2015

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) on whether his August 1, 2014 grievance with the Virginia Department of Transportation (“agency”) qualifies for a hearing. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

The grievant was employed by the agency as a signal systems manager. At some time around June 2014, the grievant went on short term disability “due to a Hostile Work Environment.” During the grievant’s disability leave, the agency removed the grievant’s access to his work location. Upon the grievant’s return to work on or about July 10, 2014, he discovered that, due to the agency’s “honest mistake,” his access card had not been reactivated. As a consequence, he was initially denied access to the building until his supervisor advised building security that he could be allowed to enter. The grievant argues that the agency’s actions constituted discrimination on the basis of a disability, a claim the agency denies.

On August 1, 2014, the grievant initiated a grievance challenging this alleged discrimination by the agency. After the parties failed to resolve the grievances during the management resolution steps, the grievant asked the agency head to qualify the grievance 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

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

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

influenced management's decision, or whether state policy may have been misapplied or unfairly applied.

For a claim of disability discrimination to qualify for hearing, there must be more than a mere allegation that discrimination has occurred. Rather, there must be facts that raise a sufficient question as to whether any adverse employment actions described within the grievance were the result of prohibited discrimination based on a protected status. If, however, the agency provides a legitimate, nondiscriminatory business reason for its action, the grievance will not be qualified for hearing, absent sufficient evidence that the agency's professed business reason was a pretext for discrimination.<sup>3</sup>

The threshold determination in assessing the grievant's claim of discrimination is whether he has experienced 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 apparently alleges that the agency discriminated against him by revoking his building access during his short-term disability leave and then by failing to ensure he had access immediately upon his return. There is no evidence, however, that the agency's actions have had a significant detrimental effect on the terms, conditions or benefits of the grievant's employment.<sup>6</sup> In the absence of such evidence, the claims raised by the grievant do not constitute adverse employment actions. Therefore, the August 1, 2014 grievance does not qualify for a hearing.

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



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Director  
Office of Employment Dispute Resolution

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<sup>3</sup> See *Hutchinson v. INOVA Health Sys., Inc.*, Civil Action No. 97-293-A, 1998 U.S. Dist. LEXIS 7723, at \*4 (E.D. Va. Apr. 8, 1998).

<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 (4th Cir. 2007).

<sup>6</sup> The temporary delay appears only to have lasted for a few minutes and there is no indication that the grievant's pay was in any way affected.

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