

Issue: Qualification – Separation from State (other issue); Ruling Date: June 10, 2015; Ruling No. 2015-4162; 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 Health System  
Ruling Number 2015-4162  
June 10, 2015

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether his March 11, 2015 grievance with the University of Virginia Health System (the “agency”) qualifies for a hearing. For the reasons set forth below, this grievance does not qualify for a hearing.

FACTS

The grievant was employed as an Administrator with the agency. On or about February 12, 2015, the grievant was given written notice of the agency’s termination of his appointment to this position through a Notice of Appointment Cessation. On or about March 11, 2015, the grievant initiated a dismissal grievance directly with EDR to dispute his separation from employment. Upon a challenge from the agency that a Notice of Appointment Cessation does not constitute a dismissal as contemplated by the grievance procedure, EDR determined that the Notice of Appointment Cessation provided to the grievant was not considered a “dismissal” as defined by the *Grievance Procedure Manual*, but may proceed through the management resolution steps.<sup>1</sup> After proceeding through the management resolution steps, the grievance was not qualified for a hearing by the agency head. The grievant now appeals that determination to EDR.

DISCUSSION

The grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.<sup>2</sup> Thus, by statute and under the grievance procedure, only certain grievances qualify for a hearing.<sup>3</sup> While the grievant is challenging the termination of his employment, such a claim, by statute, does not automatically qualify for a hearing as it was not a termination based on a disciplinary action or for unsatisfactory performance.<sup>4</sup> A Notice of Appointment Cessation does not qualify for a hearing unless the grievant presents evidence that raises a sufficient question as to whether discrimination,

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<sup>1</sup> EDR Ruling No. 2015-4114.

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

<sup>3</sup> See *id.* §§ 2.2-3004(A), (C); *Grievance Procedure Manual* §§ 4.1 (a), (b).

<sup>4</sup> See EDR Ruling No. 2015-4114.

retaliation, or discipline may have improperly influenced management's decision, or whether state or agency policy may have been misapplied or unfairly applied.<sup>5</sup> The grievant has not alleged discrimination or retaliation. Therefore, the grievant's claims could only qualify for hearing based upon a theory that the agency has misapplied or unfairly applied policy.<sup>6</sup>

For an allegation of misapplication of policy or unfair application of policy to qualify for a hearing, there must be facts that raise a sufficient question as to whether management violated a mandatory policy provision, or whether the challenged action, in its totality, was so unfair as to amount to a disregard of the intent of the applicable policy. Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions."<sup>7</sup> Thus, typically, a 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>8</sup> Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one's employment.<sup>9</sup> In this case, an adverse employment action occurred because the grievant lost his employment.

In this case, we are unable to conclude that any policy violation has occurred under the facts presented. The General Assembly has recognized that "the maintenance of [the University's] Medical Center . . . requires specialized management and operation . . . ."<sup>10</sup> Further, pursuant to Section 2.2-2905(19) of the Code of Virginia, "[e]mployees of the University of Virginia Medical Center" are exempted from the Virginia Personnel Act but "shall remain subject to the provisions of the State Grievance Procedure . . . ." To this end, the University indicates that it has developed a comprehensive human resources program tailored to address its unique needs and the requirements set forth by the General Assembly.

Medical Center Human Resources Policy 105, *Management Conditions of Appointment*, states that members of agency management "serve without the expectation of continued employment, are employed without contract or term and may be given Notice of Appointment

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<sup>5</sup> See Va. Code § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).

<sup>6</sup> During the management resolution steps, the grievant apparently informed the agency that he was "not alleging discrimination or retaliation." He argued instead that "multiple policies [and] procedures were violated" and specifically argued that "[n]o notice was provided in writing as Required by Policy." To the extent any of the grievant's arguments could be construed to support a claim of discrimination, retaliation, or workplace harassment, such claims require that the conduct at issue be based on a protected status or the exercise of protected activity. *E.g.*, EDR Ruling Number 2015-4128; EDR Ruling Number 2015-4099; EDR Ruling Number 2013-3613; *see* Va. Code § 2.2-3004(A) (stating the circumstances in which grievances alleging discrimination and retaliation qualify for a hearing, including what constitutes a protected status or protected activity); Executive Order Number 1, *Equal Opportunity* (2014) (identifying additional protected statuses on which discrimination is prohibited in state employment). Here, the grievant has not asserted that the agency's actions were based on a protected status or the exercise of protected activity and, thus, would not qualify for a hearing on any of those bases.

<sup>7</sup> See *Grievance Procedure Manual* § 4.1(b).

<sup>8</sup> *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

<sup>9</sup> *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007) (citation omitted).

<sup>10</sup> Va. Code § 23-77.3(A).

Cessation at any time.”<sup>11</sup> Here, it is undisputed that the agency issued the grievant a Notice of Appointment Cessation ending his employment. Pursuant to this Notice, the grievant was granted salary and medical benefits for a twelve month severance period, consistent with agency policy.<sup>12</sup> As such, EDR can find no violation of any mandatory provision of the applicable policies in the agency’s handling of the grievant’s situation.

Further, the grievance does not raise a sufficient question as to whether the agency’s action was inconsistent with other decisions made by the agency. There was no indication that the grievant was treated inconsistently compared to other employees in similar situations. Therefore, EDR concludes that the grievant has not presented evidence raising a sufficient question that any policies have been either misapplied and/or unfairly applied to qualify for hearing.

EDR’s qualification rulings are final and nonappealable.<sup>13</sup>



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<sup>11</sup> Medical Center Human Resources Policy 105, *Management Conditions of Appointment*, § D(2)(2) (citation omitted).

<sup>12</sup> *Id.*

<sup>13</sup> *See* Va. Code § 2.2-1202.1(5).