

Issue: Reconsidered Qualification – Management Actions (non-disciplinary transfer);
Ruling Date: January 29, 2016; Ruling No. 2016-4292; Agency: Department of
Motor Vehicles; Outcome: Not Qualified.



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

RECONSIDERED QUALIFICATION RULING

In the matter of Department of Motor Vehicles
Ruling Number 2016-4292
January 29, 2016

The grievant has requested that the Office of Employment Dispute Resolution (EDR) reconsider its qualification determination in Ruling Number 2016-4255 (the initial qualification ruling), which held that the grievant's August 3, 2015 grievance does not qualify for a hearing.¹ For the reasons discussed below, we find no error with the initial qualification determination.

The grievant's August 3, 2015 grievance concerns his reassignment within the agency, which he alleges was done arbitrarily, in violation of state policy, and in retaliation for "[his attempts] to enforce policy and procedure."² EDR Ruling Number 2016-4255 determined that the grievance did not qualify for hearing. In his request for reconsideration, the grievant implicitly disputes EDR's analysis and conclusions in that ruling and alleges that only a portion of his grievance was addressed in the initial qualification ruling. He states that EDR did not address his grieved claims of a hostile work environment and requests reconsideration of this point. He also provides further documentation for EDR's consideration.³

EDR does not generally reconsider its qualification rulings and will not do so without sufficient cause. For example, EDR might reconsider a ruling containing a mistake of fact, law, or policy where the party seeking reconsideration has no opportunity for appeal. However, there must be clear or convincing evidence of such a mistake for reconsideration to be appropriate.⁴

To the extent that the grievant argues that his claims regarding being transferred to a different position should have qualified for a hearing, EDR did consider the grievant's claims of discrimination, retaliation, and improper discipline. However, EDR concluded that the agency offered a reasonable explanation for the grievant's reassignment and there was insufficient evidence to indicate that the stated explanation was pretext for an improper motive. Unless the employee presents sufficient evidence 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, a grievance challenging issues such as the ones presented in this

¹ See EDR Ruling No. 2016-4255.

² *Id.*

³ The grievant also requests a formal investigation into his allegations. EDR has investigated the issues raised in his grievance to the extent necessary for determinations in its qualification ruling. To the extent the grievant seeks a different kind of investigation, EDR does not have authority for such an investigation. The grievant would have to make his request to another entity such as the Office of the State Inspector General.

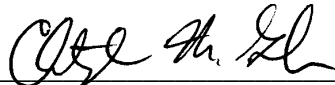
⁴ See EDR Ruling Nos. 2010-2502, 2010-2553.

case will not qualify for a hearing.⁵ EDR Ruling Number 2016-4255 found that the grievant had not presented such evidence. In his request for reconsideration, the grievant has submitted nothing that would alter EDR's findings. EDR has reviewed the additional information provided by the grievant and concludes that there are no grounds to reconsider or change the analysis of the underlying issue. While the grievant may disagree with EDR's prior ruling, he presents nothing in his request for reconsideration indicating that a mistake of fact, law, or policy led to an incorrect result. As such, the August 3, 2015 grievance does not qualify for a hearing on this basis.

The grievant's allegations of the existence of a hostile work environment were considered in EDR's prior review, though not specifically addressed in the ruling. However, considering the fact that the grievant no longer works in the same environment, it appears that this matter may be one for which no effectual relief is available. Were the grievant successful at a hearing in proving the existence of a hostile work environment at his former station, the hearing officer's remedy would most likely be limited to ordering the agency to correct the hostile work environment.⁶ As discussed in EDR Ruling Number 2016-4255, the agency asserts that it did reassign the grievant in an effort to improve the work environment overall. Therefore, it would appear that a hearing officer could not provide the grievant with any further meaningful relief.

EDR's ruling in this matter is not meant to indicate that we agree with or condone the actions taken in this matter. The grievant has raised a number of troubling allegations regarding the conduct of certain members of his prior work environment. If true, it is not clear, based on what EDR has reviewed, how some of the behaviors were permitted to continue with impunity or why management did not act on certain issues presented by the grievant. However, EDR's analysis is not whether management actions and inactions were good or bad judgment, but whether a grievance qualifies under the standards set forth by the Code of Virginia and the *Grievance Procedure Manual*. While EDR is sympathetic to the grievant's situation, in this regard, the grievance presented does not qualify for a hearing for the reasons discussed above and in EDR Ruling Number 2016-4255.

The grievant's request for reconsideration is denied and the grievance remains closed. EDR's rulings on matters of qualification are final and nonappealable.⁷



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Office of Employment Dispute Resolution

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

⁶ See *Rules for Conducting Grievance Hearings* § VI(C)(1); *Grievance Procedure Manual* § 5.9(a).

⁷ Va. Code § 2.2-1202.1(5).