

Issue: Qualification – Discipline (counseling memo); Ruling Date: March 4, 2016;
Ruling No. 2016-4307; 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 Medical Center
Ruling Number 2016-4307
March 4, 2016

The grievant has requested a ruling on whether her November 3, 2015 grievance with the University of Virginia Medical Center (the University) qualifies for a hearing. For the reasons discussed below, the Office of Employment Dispute Resolution (EDR) at the Virginia Department of Human Resource Management finds that this grievance does not qualify for a hearing.

FACTS

The November 3, 2015 grievance challenges a “Step 1 – Informal Counseling Memo” received by the grievant on or about October 29, 2015.¹ The counseling memo indicates that the grievant engaged in “perceived disrespectful and discourteous behavior” and failed to perform her responsibilities under University policy. The grievant disputes the statements contained in the letter and alleges that she is being singled out to perform differently from her coworkers. After the grievance had proceeded through the management steps, the agency head declined to qualify this grievance for a hearing. The grievant now appeals that determination.

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, as well as the contents of statutes, ordinances, personnel policies, procedures, rules, and regulations, generally do not qualify for a hearing unless the grievant presents evidence raising a sufficient question as

¹ The grievant was originally issued formal disciplinary action for the same incident cited within the counseling memo. Pursuant to an agreement between the University and the grievant, the disciplinary action was reduced to the informal counseling memo, conditioned upon the grievant’s withdrawal of her request for a grievance hearing in a prior grievance challenging the disciplinary action. The grievant subsequently initiated a second grievance (the current November 3, 2015 grievance) regarding the informal counseling memo. As the University allowed her to proceed through the management resolution steps of its own accord, we do not reach the issue of whether the grievant’s challenge to this action complied with the grievance procedure.

² See *Grievance Procedure Manual* § 4.1.

³ See Va. Code § 2.2-3004(B).

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

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions."⁵ 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."⁶ Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one's employment.⁷

The management action challenged in this grievance is a type of counseling memorandum. A counseling memo does not generally constitute an adverse employment action, because such an action, in and of itself, does not have a significant detrimental effect on the terms, conditions, or benefits of employment.⁸ Therefore, the grievant's challenge to the counseling memorandum issued to her does not qualify for a hearing. However, should the counseling memorandum grieved in this case later serve to support an adverse employment action against the grievant, such as a formal disciplinary action or a "Below Contributor" annual performance rating, this ruling does not prevent the grievant from attempting to contest the merits of these allegations through a subsequent grievance challenging the related adverse employment action.

EDR's qualification rulings are final and nonappealable.⁹



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

⁵ *See Grievance Procedure Manual* § 4.1(b).

⁶ *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

⁷ *See, e.g., Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007) (citation omitted).

⁸ *See Boone v. Goldin*, 178 F.3d 253 (4th Cir. 1999).

⁹ Va. Code § 2.2-1202.1(5).