

Issue: Qualification – Management Actions (assignment of duties); Ruling Date: February 12, 2018; Ruling No. 2018-4661; Agency: George Mason University; Outcome: Not Qualified.



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

QUALIFICATION RULING

In the matter of George Mason University
Ruling Number 2018-4661
February 12, 2018

The grievant has requested a ruling from the Office of Equal Employment and Dispute Resolution (“EEDR”) at the Department of Human Resource Management on whether her September 24, 2017 grievance with George Mason University (the “University”) qualifies for a hearing. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

The grievant is employed by the University as a Master Police Officer. Between June and September 2017, the grievant participated in a canine training class, with the purpose of obtaining a certification that would allow her to perform canine handler duties as part of the University’s canine handler program.¹ On September 9, 2017, the grievant was notified by her supervisor that she would not be permitted to continue with the training class and was being removed from the University’s canine handler program. Management explained to the grievant that the instructor for the class had shared concerns about the grievant’s performance during the class and her ability to successfully work as a canine handler. As a result of the issues reported by the instructor, the University determined that the grievant should be removed from its canine handler program without completing the entirety of the training program. Since her removal from the University’s canine handler program, the grievant has returned to performing the same job duties that were assigned to her before her participation in the training. In addition, the grievant’s salary, pay band, and benefits have not been impacted in any way by the reassignment.

On September 24, 2017, the grievant initiated a grievance challenging the University’s decision to remove her from its canine handler program and requesting that she “be reinstated to the [University’s] K9 Program as a K9 Handler.” After proceeding through the management steps, the grievance was not qualified for a hearing by the agency head. The grievant now appeals that determination to EEDR.²

¹ The grievant was unable to attend and/or participate in some portions of the training program due to an injury that required medical restrictions.

² In an attachment indicating her desire to appeal the agency head’s qualification decision to EEDR, the grievant has attempted to challenge additional issues relating to her annual performance evaluation, which she received on or about October 23, 2017. Because additional management actions or omissions cannot be added to a grievance after it is filed, this ruling will not address the grievant’s arguments regarding her evaluation. *Grievance Procedure Manual* § 2.4. The grievant may file another grievance, if timely, to challenge additional management actions or omissions other than her removal from the University’s canine handler program. Any such grievance must comply with the initiation requirements of the grievance procedure, as set forth in Section 2.4 of the *Grievance Procedure Manual*.

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.³ Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.⁴ Thus, claims relating to issues such as 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.⁵ The grievant has not alleged discrimination, retaliation, or discipline. Therefore, the grievant's claims could only qualify for a hearing based upon a theory that the agency has misapplied or unfairly applied policy.

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions."⁶ 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." Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one's employment. For purposes of this ruling only, it will be presumed that the grievance has challenged an adverse employment action.

Upon review by this Office, there is nothing in the grievance record to suggest that the University misapplied and/or unfairly applied policy in removing the grievant from its canine handler program. In her grievance, the grievant appears to allege that the University's decision was inconsistent with policy on the basis that she should have been offered remedial training before she was removed from the canine handler program. The grievant further claims that she was treated differently than two other similarly situated employees who were given a second attempt to attend a training class.

EEDR's review of the grievance record indicates that the University received feedback from the canine handler training instructor that the grievant's performance at the training was not acceptable. Specifically, the instructor indicated that, in his opinion, the grievant had not fully participated in the program and did not display adequate skills to perform canine handler duties at the University. While the grievant may disagree with the characterization of her performance at the training program and the instructor's comments, the University decided to reassign her because the instructor's report raised legitimate concerns about her ability to perform in a canine handler position. Furthermore, the grievant has not identified a mandatory policy provision that would prevent the University from removing the grievant from her canine handler assignment

³ See *Grievance Procedure Manual* § 4.1.

⁴ Va. Code § 2.2-3004(B).

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

⁶ *Grievance Procedure Manual* § 4.1(b).

under these circumstances, and EEDR has not identified any such policy. It is undisputed that the grievant's role title, salary, and pay band have not changed as a result of the reassignment. Additionally, and as stated above, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government, including the methods, means and personnel by which work activities are to be carried out.⁷

With regard to the University's allegedly inconsistent treatment of other similarly situated employees, the grievant claims that two employees attended a sniper training class but did not qualify to be certified as snipers. The grievant argues that these employees were then given a second opportunity to attend the qualification course and ultimately were successfully able to obtain a sniper certification. During the resolution steps, management provided the grievant with additional information about the comparator employees. According to the University, the training vendor offered the comparator employees another attempt to attend the class and the University had not received negative feedback about their performance in the class. Based on this information, there appears to have been a reasonable basis for the University to consider these situations differently.

Although the grievant disagrees with the agency's assessment of how to best distribute the assignment of duties among employees, she has not raised a question as to whether the agency misapplied and/or unfairly applied policy, acted in a manner that was inconsistent with other decisions regarding the reassignment of employees, or was otherwise arbitrary or capricious. In summary, it appears that the agency's decision to remove the grievant from its canine handler program is consistent with the discretion granted by policy. Accordingly, the grievance does not qualify for hearing on this basis.

EEDR's qualification rulings are final and nonappealable.⁸



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⁷ Va. Code § 2.2-3004(B).

⁸ *See id.* § 2.2-1202.1(5).