

Issue: Qualification – Management Actions (assignment of duties); Ruling Date:
February 12, 2019; Ruling No. 2019-4842; Agency: Department of Motor Vehicles;
Outcome: Not Qualified.



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

QUALIFICATION RULING

In the matter of the Department of Motor Vehicles
Ruling Number 2019-4842
February 12, 2019

The grievant has requested a ruling from the Office of Equal and Employment Dispute Resolution (“EEDR”) at the Department of Human Resource Management (“DHRM”) on whether his October 24, 2018 grievance with the Department of Motor Vehicles (the “agency”) qualifies for a hearing. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

On or about October 24, 2018, the grievant initiated a grievance alleging issues with work assignments involving licensing and titling data entry. The grievant asserts that these assignments were imposed as punishment and that they are outside the scope of his position. He also challenges the equitable nature of these assignments in that not all station employees across the Commonwealth are assigned these duties, and they are not assigned equally among his local station employees. The grievant also alleges that the data entry work of another employee was reassigned to the grievant and others in a discriminatory fashion during a closing of the station. 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.

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.¹ Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.² 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.³

¹ See *Grievance Procedure Manual* § 4.1.

² Va. Code § 2.2-3004(B).

³ *Id.* § 2.2-3004(A); *Grievance Procedure Manual* § 4.1(b), (c).

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve “adverse employment actions.”⁴ Thus, typically, the 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.”⁵ Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one’s employment.⁶

Having reviewed the entirety of the grievance paperwork and interviewed the grievant regarding the issues raised in his grievance, EEDR is unable to find that any of the matters grieved rise to the level of an adverse employment action such that this grievance can be qualified for a hearing. The grievant has been assigned work tasks that are administrative and while these may not be preferred assignments, EEDR has reviewed nothing indicating that the work is punitive in nature. Further, there is no indication that these assignments have created a *de facto* reclassification of his position into a lower level.⁷ While the data entry tasks could normally be performed by employees in a lower pay band, the rest of the grievant’s duties remain unchanged. Consequently, we cannot find that the grievant has somehow been demoted or reassigned into a lower position due to these additional duties.

The grievant has raised some legitimate questions as to the equity by which the data entry tasks have been assigned and effectuated. While many of these decisions reside in the discretion granted to an agency to manage its affairs,⁸ EEDR inquired of these practices in an effort to help resolve any potential workplace conflict being created. It appears, however, that the grievant’s claims are largely moot going forward. The agency has indicated that the data entry tasks are going to be reassigned to a single employee at the grievant’s station and the grievant will no longer receive these duties. Consequently, even if EEDR found a basis by which this grievance could qualify for a hearing, there would be no further relief that a hearing officer could award in this instance.

Based on the foregoing analysis, the grievance does not qualify for a hearing. EEDR’s qualification rulings are final and nonappealable.⁹



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⁴ See *Grievance Procedure Manual* § 4.1(b).

⁵ *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

⁶ *Holland v. Washington Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007) (citation omitted).

⁷ See DHRM Policy 3.10, *Compensation*.

⁸ For example, EEDR can find nothing in policy that is contravened by these assignments in general. They appear to be legitimate and reasonable assignments to an employee in the grievant’s position.

⁹ See Va. Code § 2.2-1202.1(5).