

Issues: Qualification – Discrimination (race and gender), and Work Conditions (employee/supervisor conflict and other); Ruling Date: February 22, 2019; Ruling No. 2019-4863; Agency: Science Museum of Virginia; Outcome: Not Qualified.



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

RECONSIDERED QUALIFICATION RULING

In the matter of the Science Museum of Virginia
Ruling Number 2019-4863
February 22, 2019

The grievant, by her representative, has requested that the Office of Equal Employment and Dispute Resolution (“EEDR”) at the Department of Human Resource Management reconsider previously issued EEDR Ruling Number 2019-4814, in which it was determined that her October 19, 2018 grievance with the Science Museum of Virginia (the “agency”) did not qualify for a hearing. For the reasons discussed below, there is no basis for EEDR to reconsider the previous ruling.

In EEDR Ruling Number 2019-4814, it was determined that the grievant’s claims of hostile work environment were not timely initiated in her grievance. The grievant’s reconsideration request challenges this determination by stating that it is not consistent with the court precedent in the *Morgan* case cited by EEDR.¹ However, the grievant cites to the same precedent that EEDR applied in the previous ruling. Acts that have occurred outside the time period for initiating a claim can be considered in a hostile work environment claim as long as there is an act challenged in the claim (grievance) that did in fact occur within the filing period. The precedent cited by the grievant and utilized by EEDR in the prior ruling, in short, depends on there being an act that has been timely challenged to render the whole claim timely.²

As discussed in the prior ruling, EEDR could only identify one such that act that even arguably occurred within the 30 calendar days preceding the initiation of the grievance: the grievant’s office move.³ There is evidence in the grievance record, as discussed in the prior ruling, that the grievant was actually told about the office move *outside* the 30 calendar-day period.⁴ The ruling, however, still found that even if we assumed the office move was timely grieved, there was not a sufficient question raised that it was motivated by a discriminatory purpose and/or the but-for result of retaliation.⁵ Therefore, because we could find no act by the agency that contributed to a valid claim of discriminatory and/or retaliatory harassment occurring within the 30 calendar days preceding the filing of the grievance, there was no basis to deem the entirety of the claim timely. The grievant’s argument does not present a basis for EEDR to reconsider its prior ruling.

¹ Nat’l R.R. Pass. Corp. v. Morgan, 536 U.S. 101 (2002).

² *Id.* at 115-17.

³ EEDR Ruling No. 2019-4814.


⁴ *Id.*

⁵ *Id.*

The grievant's other assertion on reconsideration challenges EEDR's analysis of the agency's stated justification for the grievant's office move. The grievant appears to state that EEDR was not reasonable to consider the agency's justification because it was provided by the agency head against whom the grievant asserts her claims of discrimination and retaliation. EEDR is unaware of any rule or precedent that would render unreliable any information provided by an individual against whom a claim is alleged, and the grievant has cited to none. Further, the agency's human resources department has corroborated the factual basis for the justification, including information about multiple employees having their offices moved due to space needs.

The grievant also appears to challenge this analysis as depriving her of due process and the ability to cross-examine the agency head on his justification for the office move. As determined in the prior ruling, the office move was not an adverse employment action and, therefore, not a claim that could qualify for a hearing under the grievance statutes.⁶ The grievant has not cited to any precedent or other basis whereby a due process right exists to cross-examine the agency's witnesses regarding an office move. While the grievance statutes do provide the right to cross-examine witnesses for claims that qualify for a hearing,⁷ because a challenge to an office move is not a claim that qualifies for such a hearing, EEDR can find no basis under the grievance procedure to support the grievant's due process claims. Consequently, we cannot find that the grievant's arguments on reconsideration provide any basis for EEDR to alter its analysis in the prior ruling.

For the reasons describe above, EEDR declines to reconsider the prior ruling. EEDR's compliance and qualification rulings are final and nonappealable.⁸



Christopher M. Grab
Director
Office of Equal Employment and Dispute Resolution

⁶ EEDR Ruling No. 2019-4814; *see* Va. Code § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).

⁷ Va. Code § 2.2-3004(E).

⁸ *Id.* § 2.2-1202.1(5).