

Issue: Qualification – Retaliation (Other Protected Right); Ruling Date: September 3, 2013; Ruling No. 2014-3678; Agency: Department of Corrections; Outcome: Not Qualified.



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

QUALIFICATION RULING

In the matter of Department of Corrections
Ruling Number 2014-3678
September 3, 2013

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) of the Department of Human Resource Management (“DHRM”) on whether his March 25, 2013 grievance with the Department of Corrections (the “agency”) qualifies for a hearing. For the following reasons, the grievance does not qualify for hearing.

FACTS

The grievant is employed with the agency as a Corrections Officer Senior. On February 27, 2013, the grievant was recommended for recognition leave by a supervisor. Although several other co-workers recommended at the same time were granted the leave at the time of the request, the agency did not immediately approve the recommended leave for the grievant. On March 25, 2013, the grievant initiated a grievance challenging the agency’s failure to approve his recognition leave. The grievant asserts that this action was part of an ongoing pattern of harassment and retaliation by the agency. The agency states that regional management asked that the leave request for the grievant be resubmitted due to a pending potential disciplinary action against the grievant. After resubmission, the agency approved the leave on July 10, 2013.

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, by statute and under the grievance procedure, management is reserved the exclusive right to manage the affairs and operations of state government.² Thus, claims relating to issues such as to 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.

¹ See *Grievance Procedure Manual* §§ 4.1 (a), (b).

² See Va. Code § 2.2-3004(B).

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve “adverse employment actions.”³ 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.”⁴ Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one’s employment.⁵

In this case, the grievant asserts that the agency did not timely grant his recognition leave. It does not appear, however, that this delay constituted the denial of a benefit by the agency: the agency merely requested that the leave request submitted by the grievant’s supervisor be resubmitted and following resubmission the leave was granted.⁶ The grievant does not assert that he was disciplined, dismissed, demoted, or otherwise subject to an agency action resulting in a significant change in employment status or a change in the terms, conditions, or benefits of his employment. In the absence of such claims, the grievance does not raise a sufficient question that an adverse employment action has occurred to qualify for a hearing.

EDR’s qualification rulings are final and nonappealable.⁷



Christopher M. Grab
Director
Office of Employment Dispute Resolution

³ See *Grievance Procedure Manual* § 4.1(b).

⁴ *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

⁵ *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007).

⁶ Although we find no adverse employment action present under the facts of this case, we caution that under some circumstances, non-action by the agency on a matter affecting pay or benefits could rise to the level of an adverse employment action.

⁷ Va. Code § 2.2-1202.1(5).