

Issue: Qualification – Miscellaneous (other issue); Ruling Date: September 10, 2013;  
Ruling No. 2014-3706; Agency: Virginia Commonwealth University; Outcome: Not  
Qualified.



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

**QUALIFICATION RULING**

In the matter of Virginia Commonwealth University  
Ruling Number 2014-3706  
September 10, 2013

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether his July 10, 2013 grievance with Virginia Commonwealth University (the “University”) qualifies for a hearing. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

On or about June 24, 2013, the University notified all employees who work at the grievant’s facility that they would need to purchase parking permits to continue parking in the facility’s parking lot. Previously, the grievant and other employees at his facility were able to park without a parking permit. The grievant initiated a grievance to challenge this management action on July 10, 2013. After the grievance had proceeded through the management steps, the agency head declined to qualify the grievance for a hearing. The grievant now appeals that determination to EDR.

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.<sup>1</sup> Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.<sup>2</sup> Thus, claims relating solely to the establishment and revision of salaries, wages, and general benefits “shall not proceed to 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 or agency policy may have been misapplied or unfairly applied.<sup>3</sup> The grievant has not alleged discrimination, retaliation, or discipline. Therefore, the grievant’s claims could only qualify for hearing based upon a theory that the agency has misapplied or unfairly applied policy.

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<sup>1</sup> See *Grievance Procedure Manual* § 4.1.

<sup>2</sup> Va. Code § 2.2-3004(B).

<sup>3</sup> *Id.* at § 2.2-3004(C); *Grievance Procedure Manual* §§ 4.1(b), (c).

For an allegation of misapplication of policy or unfair application of policy to qualify for a hearing, there must be facts that raise a sufficient question as to whether management violated a mandatory policy provision, or whether the challenged action, in its totality, was so unfair as to amount to a disregard of the intent of the applicable policy. Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve “adverse employment actions.”<sup>4</sup> 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.”<sup>5</sup> Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one’s employment.<sup>6</sup> In this case, it will be assumed that the University’s change in parking permit requirements is adverse because it has affected the benefits of the grievant’s employment.<sup>7</sup>

In this case, the grievant has alleged that the agency did not previously require personnel at his facility to pay for parking, and that the parking area at his facility does not have enough spaces for all employees who work there. He further argues that he works a rotating-shift schedule which frequently results in his using the parking area outside of normal business hours, the time during which a parking permit is required, and thus should not be required to purchase a parking permit. However, EDR has found no mandatory policy provision that the agency has violated, and the grievant has cited to none. The grievant has also presented no evidence that the agency’s action was inconsistent with other decisions regarding parking requirements or was otherwise arbitrary or capricious. On the contrary, it seems reasonable that the agency requires all employees to purchase parking permits as a condition of using its parking facilities. Because the grievant has not presented facts that raise a sufficient question as to whether any policies may have been either misapplied and/or unfairly unapplied, the grievance does not qualify for a hearing.

EDR’s qualification rulings are final and nonappealable.<sup>8</sup>



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<sup>4</sup> See *Grievance Procedure Manual* § 4.1(b).

<sup>5</sup> *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

<sup>6</sup> *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007) (citation omitted).

<sup>7</sup> See 26 U.S.C. §§ 132(a)(5), (f)(5)(C) (classifying employer-provided parking “on or near the business premises of the employer” as a fringe benefit for purposes of calculating an employee’s gross income).

<sup>8</sup> See Va. Code § 2.2-1202.1(5).