

Issues: Qualification – Discrimination (race) and Work Conditions (employee/supervisor conflict); Ruling Date: October 30, 2013; Ruling No. 2014-3726; Agency: Department of Juvenile Justice; Outcome: Not Qualified.



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

QUALIFICATION RULING

In the matter of the Department of Juvenile Justice
Ruling Number 2014-3726
October 31, 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 July 15, 2013 grievance with the Department of Juvenile Justice (“DJJ”) qualifies for hearing. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

On July 15, 2013, the grievant initiated a grievance challenging an alleged hostile work environment created by his supervisor. After the parties failed to resolve the grievance during the management resolution steps, the grievant has asked EDR to qualify the grievance for hearing. The grievant’s request was denied and he requested a qualification ruling by 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.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.

Harassment/Hostile Work Environment

The grievant alleges that during the period from January 2012 through the initiation of his grievance in July 2013, he was subjected to a hostile work environment on the basis of his

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

² See Va. Code § 2.2-3004(B).

race.³ For a claim of a discriminatory hostile work environment or harassment to qualify for a hearing, the grievant must present evidence raising a sufficient question as to whether the conduct at issue was (1) unwelcome; (2) based on a protected status; (3) sufficiently severe or pervasive so as to alter the conditions of employment and to create an abusive or hostile work environment; and (4) imputable on some factual basis to the agency.⁴ “[W]hether an environment is ‘hostile’ or ‘abusive’ can be determined only by looking at all the circumstances. These may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.”⁵

In this case, the grievant argues that his supervisor undermined his authority and has taken steps to limit the grievant's role. In particular, the grievant asserts that his supervisor has hampered the grievant's ability to manage his subordinates and improve facility security, encouraged the grievant's subordinates to disregard the grievant's directives and seek direction from the supervisor instead, failed to provide the grievant with keys necessary for his job, repeatedly failed to refer to the grievant by his rank, made unreasonable and/or inappropriate demands and criticisms, and otherwise managed the grievant in a disrespectful and undermining manner. The grievant states that he believes these actions were racially motivated.

While we appreciate the grievant's concerns regarding his supervisor's alleged actions, prohibitions against harassment do not provide a “general civility code”⁶ or remedy all offensive or insensitive conduct in the workplace.⁷ For workplace conduct to constitute an actionable hostile environment, the conduct must rise to a “sufficiently severe or pervasive” level such that an unlawfully abusive or hostile work environment was created.⁸ In this case, the challenged conduct cannot be found to rise to this level. There is no indication that the terms, conditions, or benefits of the grievant's employment were detrimentally impacted.⁹ In the absence of such evidence, this grievance cannot qualify for hearing.

However, even if we were to assume that the grievant has demonstrated the existence of a substantially severe or pervasive hostile work environment, he has not presented sufficient evidence to show that his supervisor's conduct was based on race. The grievant asserts that it is his understanding that his predecessor, who is a member of the same racial group as the grievant, had “faced similar issues” with his supervisor. This mere supposition is not sufficient to demonstrate a

³ The second-step respondent limited consideration of the grieved conduct to those events occurring in the 30 days prior to the grievance. For purposes of this ruling, we will assume, without deciding, that all the challenged conduct was timely grieved.

⁴ See generally *White v. BFI Waste Services, LLC*, 375 F.3d 288, 296-97 (4th Cir. 2004).

⁵ *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 23 (1993).

⁶ See *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998).

⁷ See, e.g., *Beall v. Abbott Labs*, 130 F.3d 614, 620-21 (4th Cir. 1997); *Hopkins v. Balt. Gas & Elec. Co.*, 77 F.3d 745, 754 (4th Cir. 1996).

⁸ See *Gilliam v. S.C. Dep't of Juvenile Justice*, 474 F.3d 134, 142 (4th Cir. 2007).

⁹ See generally *Gunten v. Maryland*, 243 F.3d 858, 869 (4th Cir. 2001) (discussing retaliatory harassment, for which EDR applies an identical qualification standard).

causal relationship between the supervisor's actions and the grievant's race.¹⁰ Accordingly, for this reason as well, the grievant's racial harassment claims do not qualify for a hearing.

EDR's qualification rulings are final and nonappealable.¹¹



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¹⁰ During EDR's investigation for this ruling, further information and/or explanation of his claims was sought from the grievant. However, the grievant did not respond to multiple messages left at his work number.

¹¹ Va. Code § 2.2-1202.1(5).