

Issue: Qualification – Management Actions (nondisciplinary transfer); Ruling Date: October 18, 2013; Ruling No. 2014-3729; Agency: Department of Behavioral Health and Developmental Services; 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 Behavioral Health  
and Developmental Services  
Ruling Number 2014-3729  
October 18, 2013

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether her June 14, 2013 grievance with the Department of Behavioral Health and Developmental Services (the “agency”) qualifies for a hearing. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

The grievant worked as a nurse at an agency facility. On June 14, 2013, the grievant initiated a grievance challenging her reassignment to another floor with a different patient population than she had previously served. During the course of the management resolution steps, the grievant voluntarily resigned her employment with the agency. After the parties failed to resolve the grievance during the management resolution steps, the grievant asked the agency head to qualify the grievance for hearing. The agency head denied the grievant’s request, and the grievant has 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.<sup>1</sup> Additionally, by statute and under the grievance procedure, management is reserved the exclusive right to manage the affairs and operations of state government.<sup>2</sup> 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.

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<sup>1</sup> See *Grievance Procedure Manual* §§ 4.1 (a), (b).

<sup>2</sup> 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.”<sup>3</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>4</sup> Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one’s employment.<sup>5</sup>

In this case, the grievant claims that she was reassigned to a floor serving geriatric patients as a form of informal discipline. She admits, however, that this new assignment is not “less appealing,” although she states she has no clinical experience working with geriatric patients. More importantly, the grievant apparently did not experience any loss of pay as a result of her reassignment, and there was no impact on her role title, position classification, or opportunities for advancement. In the absence of such evidence, the grievance does not raise a sufficient question that an adverse employment action has occurred to qualify for a hearing.

Further, even in the event the grievant were able to show that she had suffered an adverse employment action, this grievance would nevertheless not be appropriate for qualification, as the hearing officer does not have the authority to grant the relief requested by the grievant and no other effectual relief is available. The relief sought by the grievant in this case is reinstatement to her previous position. However, the grievant voluntarily left her employment with the agency prior to the completion of the management resolution steps. As a result, even if the hearing officer were to find that the reassignment challenged by the grievant constituted informal discipline or was otherwise a misapplication of policy, there would be no remedy available.<sup>6</sup> Because a hearing officer would be unable to provide any remedy to the grievant, her grievance cannot qualify for a hearing.

EDR’s qualification rulings are final and nonappealable.<sup>7</sup>



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Director  
Office of Employment Dispute Resolution

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<sup>3</sup> See *Grievance Procedure Manual* § 4.1(b).

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

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

<sup>6</sup> See *Grievance Procedure Manual* §§ 5.9(a), (b).

<sup>7</sup> Va. Code § 2.2-1202.1(5).