

Issue: Compliance – Grievance Procedure (other issue); Ruling Date: November 20, 2013; Ruling No. 2014-3765; Agency: Department of Corrections; Outcome: Agency in Compliance.



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

**COMPLIANCE RULING**

In the matter of the Department of Corrections  
Ruling Number 2014-3765  
November 20, 2013

The Department of Corrections (the “agency”) has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) of the Department of Human Resource Management allowing it to administratively close the grievant’s March 20, 2013 grievance. For the reasons set forth below, this grievance will be closed.

FACTS

On or about March 20, 2013, the grievant initiated a grievance challenging her supervisor’s alleged threat to take disciplinary action against her. On May 5, 2013, after the completion of the second resolution step, the grievant went on short-term disability. During her absence, the agency advanced the grievance through the remaining steps, concluding with the agency head determining that her grievance did not qualify for hearing. Under the grievance procedure, the grievant then had the option to appeal the agency head’s decision, but she was apparently unable to do so due to her continuing disability. The grievant is now on long-term disability and has been separated from employment with the agency. The agency has asked EDR for permission to administratively close the March 20, 2013 grievance.

Under the facts presented in this case, we agree that administratively closing the grievance is an appropriate measure. The grievant’s failure to advance the grievance does not constitute non-compliance with the grievance procedure, as her disability status has apparently precluded her from taking the necessary actions. However, it is clear that the grievance in this case will not qualify for hearing, and therefore it makes little sense to continue to stay the grievance for the purpose of a future qualification ruling.

The grievance procedure generally limits grievances that qualify for a hearing to those that involve “adverse employment actions.”<sup>1</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

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

responsibilities, or a decision causing a significant change in benefits.”<sup>2</sup> Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one’s employment.<sup>3</sup> In this case, the grievant claims that her supervisor threatened her with a Group II Written Notice for sending work-related information to her personal e-mail account. A supervisor warning an employee that his or her conduct may result in disciplinary action does not, in itself, constitute an adverse employment action. Further, the grievant does not assert that she 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.

Further, even if the grievant were able to show the existence of an adverse employment action, there is no effective relief a hearing officer could grant. At most, a hearing officer could order the grievant’s supervisor not to issue threats of disciplinary action in the future. Because the grievant is no longer employed by the agency, however, any such prohibition would be moot. Therefore qualification would be inappropriate on this basis as well.

Under these circumstances, there would appear to be no reason to require the agency to hold the grievant’s March 20, 2013 grievance until such time, if ever, that the grievant is able to appeal the agency head’s qualification decision to EDR. Accordingly, the agency’s request to administratively close the March 20 grievance is granted.

EDR’s compliance rulings are final and nonappealable.<sup>4</sup>



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Christopher M. Grab  
Director  
Office of Employment Dispute Resolution

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<sup>2</sup> Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 761 (1998).

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

<sup>4</sup> See Va. Code § 2.2-1202.1(5).