Issues: Qualification – Discipline (Counseling Memo) and Work Conditions (supervisor/employee conflict); Ruling Date: July 18, 2014; Ruling No. 2014-3920, 2014-3921; Agency: University of Virginia; Outcome: Not Qualified.

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

QUALIFICATION RULING

In the matter of the University of Virginia
Ruling Numbers 2014-3920, 2014-3921
July 18, 2014

The grievant has requested a ruling from the Office of Employment Dispute Resolution ("EDR") at the Department of Human Resource Management on whether his February 12, 2014 and March 13, 2014 grievances with the University of Virginia ("University") qualify for a hearing. For the reasons discussed below, these grievances do not qualify for a hearing.

FACTS

The grievant initiated a grievance on February 12, 2014 challenging the issuance of a "Letter of Counsel and Expectations in the Workplace" and directives from his supervisor regarding his email signature.[1] In addition, on March 13, 2014, the grievant initiated a grievance challenging his supervisor's failure to submit documentation for the grievant to use in obtaining college credit. Both grievances proceeded through the management resolution steps, at which point the agency head declined to qualify the grievances for a hearing. The grievant now appeals the agency head's denial of qualification 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.[2] Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.[3] Thus, claims relating to issues such as 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.[4]

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions."[5] Thus, typically, the threshold question is whether the grievant has suffered an adverse employment action. An adverse employment action

[1] The grievant subsequently withdrew the part of the February 12, 2014 grievance challenging the directives regarding his email signature. As such, those claims will not be addressed further in this ruling.
[2] *See Grievance Procedure Manual* § 4.1.
[3] Va. Code § 2.2-3004(B).
[4] *Id.* § 2.2-3004(A); *Grievance Procedure Manual* § 4.1(c).
[5] *See Grievance Procedure Manual* § 4.1(b).

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."[6] Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one's employment.[7]

In his February 12, 2014 grievance, the grievant challenges his receipt of a "Letter of Counsel and Expectations in the Workplace." A written counseling does not generally constitute an adverse employment action because such an action, in and of itself, does not have a significant detrimental effect on the terms, conditions, or benefits of employment.[8] Therefore, the February 12, 2014 grievance relating to the "Letter of Counsel and Expectation in the Workplace" does not qualify for a hearing.[9]

Similarly, the failure by the grievant's supervisor to assist the grievant in obtaining college credit by providing letters "detailing certain aspects of [the grievant's] professional responsibilities" also does not constitute an adverse employment action. Although the grievant asserts that his supervisor's failure to provide these letters could result in his having to take an additional course, such a result is not equivalent to a hiring, firing, failure to promote, reassignment or a significant change in benefits.[10] As there has been no significant detrimental effect on the terms, conditions or benefits of the grievant's employment, the March 13, 2014 grievance regarding the supervisor's failure to provide the requested letters does not qualify for hearing.

CONCLUSION

For the reasons set forth above, the grievant's February 12, 2014 and March 13, 2014 grievances do not qualify for a hearing. EDR's qualification rulings are final and nonappealable.[11]

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[6] Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 761 (1998).
[7] Holland v. Wash. Homes, Inc., 487 F.3d 208, 219 (4th Cir. 2007) (citation omitted).
[8] *See* Boone v. Goldin, 178 F.3d 253, 256 (4th Cir. 1999).
[9] While the "Letter of Counsel and Expectation in the Workplace" has not had an adverse impact on the grievant's employment, if it is subsequently used to support an adverse employment action against the grievant, such as a formal Written Notice or a "Below Contributor" annual performance rating, this ruling does not prevent the grievant from attempting to contest the merits of these allegations through a subsequent grievance challenging the related adverse employment action.
[10] It appears that the grievant was ultimately able to complete his degree without having to take this additional course.
[11] *See* Va. Code § 2.2-1202.1(5).