

Issue: Qualification – Separation from State (other issue); Ruling Date: September 15, 2014; Ruling No. 2015-3962; Agency: University of Virginia Medical Center; Outcome: Not Qualified.



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

COMPLIANCE RULING

In the matter of the University of Virginia Health System
Ruling Number 2015-3962
September 15, 2014

The grievant has requested a ruling from the Office of Employment Dispute Resolution (EDR) on whether his June 10, 2014 grievance with the University of Virginia Health System (the University or the agency) qualifies for a hearing. For the reasons set forth below, this grievance does not qualify for a hearing.

FACTS

The grievant was employed as an Associate Chief Nursing Officer with the University. On or about May 28, 2014, the grievant was given written notice of the University's termination of his appointment to this position through a Notice of Appointment Cessation. On or about June 10, 2014, the grievant initiated a dismissal grievance directly with EDR to dispute his separation from employment as well as an alleged alteration to his performance evaluation.¹ Upon a challenge from the University that a Notice of Appointment Cessation does not constitute a dismissal as contemplated by the grievance procedure, EDR determined that the Notice of Appointment Cessation provided to the grievant was not considered a "dismissal" as defined by the *Grievance Procedure Manual*, but may proceed through the management resolution steps.² After so doing, the agency head declined to qualify the grievance for a hearing and the grievant now appeals that determination.

DISCUSSION

The grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.³ Thus, by statute and under the grievance procedure, only certain grievances qualify for a hearing.⁴ While the grievant is challenging the termination of his employment, such a claim, by statute, does not automatically

¹ The grievant was granted relief during the management resolution steps as to his challenge to the performance evaluation and thus, we will not address that issue in this ruling.

² EDR Ruling No. 2014-3917.

³ See Va. Code § 2.2-3004(B).

⁴ See Va. Code §§ 2.2-3004(A), (C); *Grievance Procedure Manual* §§ 4.1 (a), (b).

qualify for a hearing as this was not a termination based on a disciplinary action or for unsatisfactory performance.⁵ In short, a Notice of Appointment Cessation does not qualify for a hearing unless there is sufficient evidence of discrimination, retaliation, or a misapplication or unfair application of policy. The grievant has not alleged discrimination or retaliation. Therefore, the grievant's claims could only qualify for hearing based upon a theory that the agency has misapplied or unfairly applied policy.

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."⁶ Thus, typically, a 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."⁷ Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one's employment.⁸ In this case, an adverse employment action occurred because the grievant lost his employment.

However, we are unable to conclude that any policy violation has occurred under the facts presented. The General Assembly has recognized that "the maintenance of [the University's] Medical Center . . . requires specialized management and operation . . ."⁹ Further, pursuant to Virginia Code § 2.2-2905(19), "[e]mployees of the University of Virginia Medical Center" are exempted from the Virginia Personnel Act (VPA) but "shall remain subject to the provisions of the State Grievance Procedure" To this end, the University indicates that it has developed a comprehensive human resources program tailored to address its unique needs and the requirements set forth by the General Assembly.

The University's policy covering conditions of appointment for members of management, Medical Center Human Resources Policy 105 (Policy 105), states that members of management "serve without the expectation of continued employment, are employed without contract or term and may be given Notice of Appointment Cessation at any time."¹⁰ Here, it is undisputed that the agency issued the grievant a Notice of Appointment Cessation ending his employment. Pursuant to this Notice, the grievant was granted salary and medical benefits for a twelve month severance period, consistent with agency policy.¹¹ As such, EDR can find no violation of any mandatory provision of the applicable policies in the agency's handling of the grievant's situation.

⁵ See EDR Ruling No. 2014-3917.

⁶ See *Grievance Procedure Manual* § 4.1(b).

⁷ *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

⁸ *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007).

⁹ Va. Code § 23-77.3(A).

¹⁰ Medical Center Human Resources Policy 105, *Management Conditions of Appointment*, § D(2)(2).

¹¹ *Id.*

Further, the grievance does not raise a sufficient question as to whether the agency's action was inconsistent with other decisions made by the agency. There was no indication that the grievant was treated inconsistently compared to other employees in similar situations. Therefore, EDR concludes that the grievant has not presented evidence raising a sufficient question that any policies have been either misapplied and/or unfairly applied to qualify for hearing.

CONCLUSION

EDR's qualification rulings are final and nonappealable.¹²



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¹² See Va. Code § 2.2-1202.1(5).