

Issues: Qualification – Management Actions (Non-Disciplinary Transfer) and Retaliation (Fraud, Waste, and Abuse); Ruling Date: September 16, 2014; Ruling No. 2015-3974; Agency: Department for the Aging and Rehabilitative 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 for Aging and Rehabilitative Services  
Ruling Number 2015-3974  
September 16, 2014

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) on whether her July 7, 2014 grievance with the Department for Aging and Rehabilitative Services (the “agency”) qualifies for a hearing. For the following reasons, this grievance does not qualify for hearing.

FACTS

On or about July 7, 2014, the grievant initiated a grievance challenging her transfer from Office A to another agency office. After the grievance proceeded through the management steps without resolution, the grievant asked the agency head to qualify the grievance for hearing. The agency head declined to qualify the grievance for a hearing and the grievant now appeals that determination.

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 hiring, promotion, transfer, assignment, and retention of employees 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.<sup>3</sup>

The grievant asserts that her transfer to another office is both disciplinary in nature and the result of retaliation because she made a report to the State Employee State Fraud, Waste and Abuse Hotline.<sup>4</sup> The agency denies the allegations and states that the timing for her transfer resulted from the receipt of a complaint that she had threatened a co-worker. Although the

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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).

<sup>3</sup> *Id.* § 2.2-3004(A); *Grievance Procedure Manual* § 4.1(c).

<sup>4</sup> Although the Grievance Form A lists a number of issues, the only management action for which the grievant apparently seeks qualification is her transfer.

agency characterizes the outcome of the investigation into that complaint as “inconclusive,” the agency states that it elected to transfer the grievant because of her role as the “primary centerpiece” in the conflicts and “ineffective working relationships” in Office A.

The grievance procedure generally limits grievances that qualify for a hearing to those that involve “adverse employment actions.”<sup>5</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>6</sup> Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one’s employment.<sup>7</sup>

A transfer or reassignment, or denial thereof, may constitute an adverse employment action if a grievant can show that the transfer/reassignment had some significant detrimental effect on the terms, conditions, or benefits of his/her employment.<sup>8</sup> A reassignment or transfer with significantly different responsibilities, or one providing reduced opportunities for promotion can constitute an adverse employment action, depending on all the facts and circumstances.<sup>9</sup> However, in general, a lateral transfer will not rise to the level of an adverse employment action.<sup>10</sup> Further, subjective preferences do not render an employment action adverse without sufficient objective indications of a detrimental effect.<sup>11</sup>

Under the facts presented to EDR, it does not appear that the grievant’s transfer amounted to an adverse employment action as it did not affect her chain of command, pay band, salary, role, title or the nature of her job responsibilities. While EDR is sympathetic to the fact that the grievant has been transferred to an office 45 miles from her current residence and is required her to work with a new caseload, nevertheless, the grievance does not raise a sufficient question that these changes have had a significant detrimental effect on her employment. An employee’s unmet preference regarding job location or maintaining a particular caseload is not enough to result in an adverse employment action.<sup>12</sup> Accordingly, the grievant’s claims regarding her transfer do not qualify for hearing under the applicable grievance statute.<sup>13</sup>

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<sup>5</sup> See *Grievance Procedure Manual* § 4.1(b).

<sup>6</sup> *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

<sup>7</sup> *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007).

<sup>8</sup> See *id.*

<sup>9</sup> See *James v. Booz-Allen & Hamilton, Inc.*, 368 F.3d 371, 375-77 (4th Cir. 2004); *Boone v. Goldin*, 178 F.3d 253, 255-256 (4th Cir. 1999); see also *Edmonson v. Potter*, 118 Fed. Appx. 726, 729 (4th Cir. 2004).

<sup>10</sup> See *Williams v. Bristol-Myers Squibb Co.*, 85 F.3d 270, 274 (7th Cir. 1996).

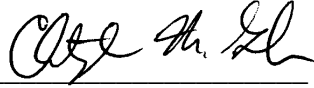
<sup>11</sup> See, e.g., *Jones v. D.C. Dep’t of Corr.*, 429 F.3d 276, 284 (D.C. Cir. 2005); *James*, 368 F.3d at 377; *Fitzgerald v. Ennis Bus. Forms, Inc.*, No. 7:05CV00782, 2007 U.S. Dist. LEXIS 875, at \*14-15 (W.D. Va. Jan. 8, 2007); *Stout v. Kimberly Clark Corp.*, 201 F. Supp. 2d 593, 602-03 (M.D.N.C. 2002).

<sup>12</sup> See, e.g., EDR Ruling No. 2015-3946; EDR Ruling No. 2015-3936.

<sup>13</sup> Va. Code § 2.2-3004(A); see also *Grievance Procedure Manual* § 4.1(b).

CONCLUSION

For the foregoing reasons, the grievant's request for qualification of her grievance for hearing is denied.<sup>14</sup> EDR's qualification rulings are final and nonappealable.<sup>15</sup>



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Office of Employment Dispute Resolution

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<sup>14</sup> Although the grievant raises concerns regarding the effect her new commute will have on her mental and physical well-being, it does not appear that the grievant currently seeks relief for any alleged failure to accommodate a disability. Accordingly, this ruling in no way limits the grievant's ability to initiate a subsequent grievance raising such a challenge.

<sup>15</sup> Va. Code § 2.2-1202.1(5).