

Issue: Qualification – Benefits/Leave (Compensatory Leave); Ruling Date: November 13, 2014; Ruling No. 2015-4013; Agency: Department of Corrections; 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 Corrections
Ruling Number 2015-4013
November 13, 2014

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) on whether her August 12, 2014 grievance with the Department of Corrections (the “agency”) qualifies for a hearing. For the reasons discussed below, this grievance is not qualified for a hearing.

FACTS

The grievant is employed by the agency as a Registered Nurse supervisor. In addition, she has been appointed a health authority by the agency. The grievant asserts that during the period from the end of March through June 18, 2014, she was required to perform the duties of a vacant Registered Nurse position without assistance, resulting in her working a significant number of additional hours. The grievant argues that the agency wrongfully denied her compensatory leave for additional hours she worked in May 2014 and improperly issued her a written counseling on July 31, 2014. On August 12, 2014, the grievant initiated a grievance challenging these management actions. 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 denied the grievant’s request, and she has now appealed 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.¹ Additionally, by statute and under the grievance procedure, management is reserved the exclusive right to manage the affairs and operations of state government.² 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

¹ See *Grievance Procedure Manual* § 4.1.

² See Va. Code § 2.2-3004(B).

influenced management's decision, or whether state policy may have been misapplied or unfairly applied.³

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions."⁴ 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."⁵ Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one's employment.⁶

In this case, the grievant challenges her receipt of a written counseling memorandum on July 31, 2014. However, a written counseling is not formal discipline and does not have a significant detrimental effect on the terms, conditions, or benefits. As a result, the July 31, 2014 written counseling cannot be found to constitute an adverse employment action.⁷ Therefore, the grievant's claims regarding that counseling do not qualify for hearing.⁸

The grievant also challenges the agency's failure to provide her compensatory leave for the additional work she performed during May 2014. However, the *Rules for Conducting Grievance Hearings* provide that, in cases involving the misapplication or unfair application of compensation policy, the hearing officer may only award relief for the 30-day period immediately prior to the initiation of the grievance.⁹ In this case, the grievant initiated her grievance on August 12, 2014. Thus, the 30-day period for which the grievant could receive additional compensation (including compensatory time) began on July 14, 2014. However, the grievant states that the period during which she performed additional work ended no later than June 18, 2014. As the grievant does not allege that she performed work for which she was denied compensation during the period from July 14, 2014 to August 12, 2014, there is no relief that could be provided through the hearings process. For this reason, her claims regarding compensatory leave are not qualified for hearing.

³ *Id.* § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).

⁴ *See Grievance Procedure Manual* § 4.1(b).

⁵ *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

⁶ *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007).

⁷ *See Boone v. Goldin*, 178 F.3d 253, 256 (4th Cir. 1999).

⁸ While the written counseling 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.

⁹ *Rules for Conducting Grievance Hearings* § VI(C)(1); *see also* DHRM Policy 3.10, *Compensatory Leave* (stating that the purpose of the policy is to provide employees with "paid leave as compensation for additional hours worked during specific times").

CONCLUSION

For all the foregoing reasons, the grievant's August 12, 2014 grievance is not qualified for hearing. EDR's qualification rulings are final and nonappealable.¹⁰



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¹⁰ Va. Code § 2.2-1202.1(5).