

Issue: Qualification – Miscellaneous (other miscellaneous); Ruling Date: November 13, 2014; Ruling No. 2015-4024; 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 2015-4024  
November 13, 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 January 5, 2011 grievance with the Department of Corrections (the “agency”) qualifies for a hearing. For the reasons discussed below, the grievance is not qualified for a hearing.

FACTS

The grievant is employed by the agency as a Corrections Captain. Prior to initiating the grievance at issue in this case, the grievant was referred to the Employee Assistance Program (“EAP”) to undergo a fitness for duty assessment. On or about January 5, 2011, after completing the assessment, he initiated a grievance alleging “[d]eceptive or delaying reactions” on the part of agency management. After receiving the agency’s third step response, the grievant went on approved leave for military service from 2011 through 2014. Upon returning to the agency in 2014, he resumed the January 5, 2011 grievance and requested qualification from the agency head. The agency head declined to qualify the grievance for a hearing, and the grievant now appeals that determination 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.<sup>1</sup> Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.<sup>2</sup> 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.<sup>3</sup>

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

<sup>2</sup> Va. Code § 2.2-3004(B).

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

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

The grievance was filed on January 5, 2011 to challenge issues surrounding or related to the fitness for duty assessment that occurred at that time. Although the issues challenged in this grievance are somewhat unclear, the grievant appears to be raising questions with how members of agency management and the EAP caseworker and/or others handled the matter. However, nothing in the grievant’s allegations regarding the conduct listed on the Grievance Form A is significant enough to rise to the level of an adverse employment action. The grievant has not demonstrated that the issues grieved had an adverse effect on the terms, conditions, or benefits of the grievant’s employment. Further, we cannot find that the grieved issues rose to a “sufficiently severe or pervasive”<sup>7</sup> level to support a claim of harassment (discriminatory or retaliatory),<sup>8</sup> to the extent such a claim has been made here. As such, the grievance does not qualify for a hearing.

EDR’s qualification rulings are final and nonappealable.<sup>9</sup>



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Director  
Office of Employment Dispute Resolution

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<sup>4</sup> See *Grievance Procedure Manual* § 4.1(b).

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

<sup>6</sup> *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007) (citation omitted).

<sup>7</sup> See generally *Gilliam v. S.C. Dep’t of Juvenile Justice*, 474 F.3d 134, 142 (4th Cir. 2007); *White v. BFI Waste Services, LLC*, 375 F.3d 288, 296-97 (4th Cir. 2004).

<sup>8</sup> As courts have noted, prohibitions against harassment, such as those in Title VII, do not provide a “general civility code,” *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998), or remedy all offensive or insensitive conduct in the workplace. See, e.g., *Beall v. Abbott Labs.*, 130 F.3d 614, 620-21 (4th Cir. 1997); *Hopkins v. Baltimore Gas & Elec. Co.*, 77 F.3d 745, 754 (4th Cir. 1996).

<sup>9</sup> See Va. Code § 2.2-1202.1(5).