

Issue: Qualification – Management Actions (non-disciplinary transfer); Ruling Date: July 9, 2015; Ruling No. 2015-4176; 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 2015-4176  
July 9, 2015

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) on whether his April 17, 2015 grievance with the Department of Corrections (the “agency”) qualifies in its entirety for a hearing. For the following reasons, the grievant’s claims regarding his transfer do not qualify for hearing.

FACTS

The grievant is employed by the agency as a Corrections Officer. The grievant was previously assigned to Facility G. On or about March 18, 2015, the grievant received a Group I Written Notice for failure to report a consensual relationship with a co-worker at Facility G. In addition to issuing the Written Notice, the agency also transferred the grievant to another facility to avoid additional contact with his romantic partner and her husband, who also worked at Facility G. On April 17, 2015, the grievant initiated a grievance challenging both the Group I Written Notice and the transfer. The agency head qualified the Written Notice for hearing but did not qualify the grievant’s claims regarding the transfer. The grievant now appeals the partial denial of qualification.

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>

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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).

The grievant appears to argue that his transfer to another facility is disciplinary in nature and that he is being treated in a manner inconsistent with how the agency has treated comparable conduct by other employees. The agency asserts that this transfer is not disciplinary but was instead an appropriate exercise of its power under agency Operating Procedure No. 101. 3, *Standards of Ethics and Conflict of Interest*, which gives the agency authority to transfer employees who have engaged in romantic relationships in order to alleviate the work problems such relationships can create.<sup>4</sup>

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 there has been no indication that it affected his pay band, salary, role, title or the nature of his job responsibilities. While EDR is sympathetic to the fact that the grievant has been transferred to an office 60 miles from his current residence, nevertheless, the grievance does not raise a sufficient question that this change has had a significant detrimental effect on his employment. An employee’s unmet preference regarding

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<sup>4</sup> Operating Procedure 101.3, *Standards of Ethics and Conflict of Interest*, §IV(F)(2)(c.)

<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) (citation omitted).

<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).

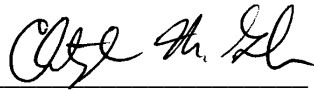
<sup>10</sup> See *Williams v. Bristol-Myers Squibb Co.*, 85 F.3d 270, 274 (7th Cir. 1996).

<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).

job location is not enough to result in an adverse employment action.<sup>12</sup> Accordingly, the grievant's claims regarding his transfer do not qualify for hearing.<sup>13</sup>

### CONCLUSION

For the foregoing reasons, the grievant's request for qualification of his grievance for hearing is denied. EDR's qualification rulings are final and nonappealable.<sup>14</sup> The agency is directed to submit a completed Form B and appropriate grievance documentation to EDR within five workdays of receipt of this ruling so that the issues qualified for a hearing by the agency head may proceed to hearing.



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Office of Employment Dispute Resolution

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<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).

<sup>14</sup> Va. Code § 2.2-1202.1(5).