

Issue: Qualification – Retaliation (grievance activity); Ruling Date: August 25, 2015;
Ruling No. 2016-4188; Agency: Department of Social Services; Outcome: Not
Qualified.



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

QUALIFICATION RULING

In the matter of the Virginia Department of Social Services
Ruling Number 2016-4188
August 25, 2015

The grievant has requested a ruling on whether her June 10, 2015 grievance with the Virginia Department of Social Services (the agency) qualifies for a hearing. For the reasons discussed below, the Office of Employment Dispute Resolution (EDR) at the Virginia Department of Human Resource Management (DHRM) finds that this grievance does not qualify for a hearing.

FACTS

The grievant is employed by the agency as an Exception Processing Manager. She filed a grievance on or about June 10, 2015 to challenge the removal of her managerial duties, alleging that the removal of these duties was an informal disciplinary action taken against her in retaliation for her participation in the grievance procedure. After proceeding through the management resolution steps, the agency declined to qualify the grievance for a hearing. 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.¹ Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.² 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, or whether a performance evaluation was arbitrary or capricious.³

¹ See *Grievance Procedure Manual* § 4.1.

² See Va. Code § 2.2-3004(B).


³ Va. Code § 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.”⁴ 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.”⁵ Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one’s employment.⁶

A reassignment or removal of job duties may constitute an adverse employment action if a grievant can show that the reassignment had some significant detrimental effect on the terms, conditions, or benefits of his/her employment.⁷ 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.⁸ However, under the facts presented to EDR, it does not appear that the reassignment of duties raised by the grievant in this instance amounted to an adverse employment action.

Based on the information presented in this grievance, it appears that the agency has in fact removed certain managerial duties from the grievant’s job responsibilities; however, at this time, such changes in duties are temporary. In some cases, a temporary change in job responsibilities could amount to an adverse employment action, but the circumstances of this case do not rise to such a level. Should the removal of managerial duties become permanent, the grievant may file another grievance to challenge that action and EDR will have to reassess this question. However, in this instance, the grievance does not qualify for a hearing.

EDR’s qualification rulings are final and nonappealable.⁹



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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) (citation omitted).

⁷ See, e.g., *Holland*, 487 F.3d at 219.

⁸ 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. App’x 726, 729 (4th Cir. 2004).

⁹ Va. Code § 2.2-1202.1(5).