

Issue: Qualification – Management Actions (non-disciplinary transfer and possible layoff); Ruling Date: October 1, 2015; Ruling No. 2016-4219; Agency: Norfolk State University; Outcome: Not Qualified.



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

QUALIFICATION RULING

In the matter of Norfolk State University
Ruling Number 2016-4219
October 1, 2015

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) on whether his grievance filed on or about July 20, 2015 with Norfolk State University (the “University”) qualifies for a hearing. For the reasons set forth below, the grievant’s July 20, 2015 grievance does not qualify for a hearing.

FACTS

The grievant is employed by the University as an administrative specialist. On or about June 5, 2015, the grievant was informed that, in lieu of layoff, he was being reassigned to an administrative position in a different academic department, although in the same role and at the same salary. On or about July 20, 2015, the grievant initiated a grievance challenging this management action. He asserts that the University’s actions violated state policy on layoffs, were motivated by improper factors, and resulted in physical and mental harm.¹

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.² Additionally, by statute and under the grievance procedure, management is reserved the exclusive right to manage the affairs and operations of state government.³ 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

¹ The grievant also asserts that the University has failed to comply with the grievance procedure during the grievance process. Claims regarding noncompliance with the grievance procedure must be raised in accordance with Section 6.3 of the *Grievance Procedure Manual*, rather than through the qualification ruling process. Further, Section 6.3 provides, “[a]ll claims of noncompliance should be raised immediately. By proceeding with the grievance after becoming aware of a procedural violation, one generally forfeits the right to challenge the noncompliance at a later time.” Having reviewed the claims of noncompliance by the University during the management steps, EDR finds that none of the grievant’s noncompliance claims survive to this stage and are effectively waived. *Grievance Procedure Manual* § 6.3.

² See *Grievance Procedure Manual* § 4.1.

³ See Va. Code § 2.2-3004(B).

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.⁴

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions."⁵ 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."⁶ Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one's employment.⁷

In this case, the grievant challenges a reassignment to another academic department.⁸ 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.⁹ 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.¹⁰ However, in general, a lateral transfer will not rise to the level of an adverse employment action.¹¹ Further, subjective preferences do not render an employment action adverse without sufficient objective indications of a detrimental effect.¹²

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 his title, salary or the general nature of his job responsibilities. The grievant asserts that the reassignment was to a duplicate position, leaving him vulnerable to a subsequent layoff,¹³ and that he has no "background" with some aspects of his new position. The grievant admits, however, that he is essentially doing the same job in a different department. Neither the grievant's speculation regarding possible future harm nor his unfamiliarity with certain aspects of his new assignment is sufficient in itself to

⁴ *Id.* § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).

⁵ *See Grievance Procedure Manual* § 4.1(b).

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

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

⁸ In this instance, it is immaterial whether the grievant's reassignment occurred as a result of the University's application of the layoff policy, since, as outlined herein, EDR has determined that no adverse employment action occurred.

⁹ *See id.*

¹⁰ *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).


¹¹ *See Williams v. Bristol-Myers Squibb Co.*, 85 F.3d 270, 274 (7th Cir. 1996).

¹² *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).

¹³ The position from which the grievant was transferred was also a "duplicate" position.

result in an adverse employment action.¹⁴ Accordingly, the grievant's claims regarding his transfer do not qualify for hearing.¹⁵

EDR's qualification rulings are final and nonappealable.¹⁶



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¹⁴ See generally, e.g., EDR Ruling No. 2015-3946; EDR Ruling No. 2015-3936.

¹⁵ Va. Code § 2.2-3004(A); see also *Grievance Procedure Manual* § 4.1(b).

¹⁶ Va. Code § 2.2-1202.1(5).