

Issue: Qualification – Miscellaneous (other); Ruling Date: October 19, 2016; Ruling No. 2017-4421; Agency: Department of Juvenile Justice; Outcome: Not Qualified.



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

QUALIFICATION RULING

In the matter of Department of Juvenile Justice
Ruling Number 2017-4421
October 19, 2016

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) on whether his June 23, 2016 grievance with the Department of Juvenile Justice (the “agency”) qualifies for a hearing. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

The grievant is employed by the agency as an officer. On or about May 23, 2016, a warrant was issued for the grievant’s arrest for the commission of a Class 6 Felony, based on complaints made by a resident investigated by the agency. The grievant was subsequently placed on unpaid leave effective July 8, 2016 pending the outcome of his court hearing.

On June 23, 2016, the grievant initiated a grievance challenging the agency’s actions. After the grievance proceeded through the management steps, the agency head declined to qualify the grievance for a hearing. The grievant has appealed that determination to EDR.

Subsequent to his appeal to EDR, the charges against the grievant were dismissed by the Commonwealth’s Attorney. The grievant returned to work on August 22, 2016 and has had his lost pay and benefits restored by the agency. The grievant asks that the agency reimburse him for his attorney’s fees and his bail fee, and provide him with an early retirement package.

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 By statute and under the grievance procedure, complaints relating solely to issues such as the methods, means, and personnel by which work activities are to be carried out, as well as hiring, promotion, transfer, assignment, and retention of employees within the agency “shall not proceed to a hearing” unless there is sufficient evidence of discrimination, retaliation, unwarranted discipline, or a misapplication or unfair application of policy.² Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve “adverse employment actions.”³ 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

¹ See *Grievance Procedure Manual* §§ 4.1(a), (b).

² Va. Code § 2.2-3004(C); *Grievance Procedure Manual* §§ 4.1(b), (c).

³ See *Grievance Procedure Manual* § 4.1(b).

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.”⁴ Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one’s employment.⁵ For purposes of this ruling only, it will be assumed that the grievant has alleged an adverse employment action.

In this case, the grievant does not allege that the actions taken by the agency were based on a discriminatory or retaliatory motive. Thus, EDR will assume that the grievant alleges that the agency’s actions constitute a misapplication or an unfair application of policy. For an allegation of misapplication of policy or unfair application of policy to qualify for a hearing, there must be facts that raise a sufficient question as to whether management violated a mandatory policy provision, or whether the challenged action, in its totality, was so unfair as to amount to a disregard of the intent of the applicable policy.

DHRM Policy 1.60, *Standards of Conduct*, provides that “[a]ny employee who is formally charged with a criminal offense (that is related to the nature of his/her job or to the agency’s mission) by outside authorities shall be immediately suspended without pay”⁶ In this case, the agency suspended the grievant without pay after he was charged by the Commonwealth’s Attorney with a Class 6 felony. After the charges against the grievant were ultimately dismissed, the agency returned him to his position and restored his back pay and benefits. Although the grievant’s frustrations with his arrest are understandable, nothing in the record EDR has viewed indicates that the agency acted in bad faith or otherwise outside of policy. Further, policy does not mandate that the agency compensate the grievant for any other losses he may have suffered as a result of the actions by the Commonwealth’s Attorney.⁷

As the grievant has presented no evidence that the agency’s actions in this case were either inconsistent with other agency actions or were otherwise arbitrary or capricious, EDR finds that the grievance does not raise a sufficient question as to whether the agency may have misapplied and/or unfairly applied state or agency policy. In addition, even if a sufficient question did exist, the relief sought by the grievant is not available under the grievance process, and as such, a hearing would be inappropriate.⁸ For these reasons, this grievance does not qualify for hearing.

EDR’s qualification rulings are final and nonappealable.⁹



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⁴ *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

⁵ *See, e.g., Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007) (citation omitted).

⁶ DHRM Policy 1.60. *Standards of Conduct*, § (C)(2)(b).

⁷ To the extent the grievant may be entitled to any compensation for these losses, any recourse, if one exists, would be through the judicial system rather than the grievance process.

⁸ *See Rules for Conducting Grievance Hearings* §§ VI(C), VI(D).

⁹ *See* Va. Code § 2.2-1202.1(5).