

Issue: Qualification – Work Conditions (employee/supervisor conflict); Ruling Date: October 20, 2016; Ruling No. 2017-4434; Agency: Department of Aging and Rehabilitative Services; 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 Aging and Rehabilitative Services
Ruling Number 2017-4434
October 20, 2016

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether her August 26, 2016 grievance with the Department for Aging and Rehabilitative Services (the “agency”) qualifies for a hearing. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

On or about August 25, 2016, the grievant received an email from her supervisor, in which the supervisor arguably criticized the grievant’s decision to forward another email thread to those not directly involved in an “internal discussion.” The grievant initiated a grievance on August 26, 2016 challenging the supervisor’s email, which she characterizes as labeling her conduct as “inappropriate and unprofessional.” After proceeding through the management resolution steps, the grievance was not qualified for a hearing by the agency head. 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.³

¹ See *Grievance Procedure Manual* § 4.1.

² Va. Code § 2.2-3004(B).

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

The grievance procedure generally limits grievances that qualify 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

The email at issue in this grievance is analogous to a Counseling Memorandum or other form of written counseling. It is not equivalent to a Written Notice of formal discipline. A written counseling does not generally constitute an adverse employment action because such an action, in and of itself, does not have a significant detrimental effect on the terms, conditions, or benefits of employment.⁷ The email was not an adverse employment action and, therefore, the grievant’s claims relating to her receipt of the email do not qualify for a hearing.

While the email has not had an adverse impact on the grievant’s employment, it could be used later to support an adverse employment action against the grievant. Should the email grievant in this instance later serve to support an adverse employment action against the grievant, such as a formal Written Notice or a “Below Contributor” annual performance rating, this ruling does not prevent the grievant from attempting to contest the merits of these allegations through a subsequent grievance challenging the related adverse employment action.

EDR’s qualification rulings are final and nonappealable.⁸



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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 *Boone v. Goldin*, 178 F.3d 253, 256 (4th Cir. 1999).

⁸ See Va. Code § 2.2-1202.1(5).