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QUALIFICATION RULING

In the matter of the Department of Corrections
Ruling Numbers 2021-5244
April 20, 2021

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Virginia Department of Human Resource Management (“DHRM”) on whether her December 18, 2020 grievance with the Department of Corrections (the “agency”) qualifies for a hearing. EDR recently issued Ruling Numbers 2021-5183, 2021-5215 addressing the grievant’s October 14, 2020 and two January 4, 2021 grievances, which did not qualify for a hearing. EDR was thereafter made aware that a separate grievance, dated December 18, 2020, had also been appealed and should be addressed as well. For the reasons discussed below, the December 18, 2020 grievance is not qualified for a hearing.

FACTS

On or about December 18, 2020, the grievant submitted a grievance that challenges her former supervisor’s denial of equipment that would have allowed her to telework. The grievance also addresses the grievant’s denied request to fill an administrative staff position. The grievant describes her former work environment as “oppressive, stressful, hostile and toxic.” She states that she is being “retaliated and discriminated against by [her now former] immediate supervisor.”

The allegations in the December 18, 2020 grievance largely overlap with issues the grievant raised in her October 14, 2020 and two January 4, 2021 grievances. However, as described in EDR Ruling Numbers 2021-5183, 2021-5215, the grievant’s supervisor at the time she initiated the December 18, 2020 grievance accepted a different position with the agency. The grievant also accepted a new position in a different unit as a lateral transfer. The grievant has indicated that she is to be given equipment that will permit her to telework. The grievant no longer reports to the supervisor she alleges was creating a hostile work environment and has an entirely new position.

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,

¹ See *Grievance Procedure Manual* § 4.1.

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 means, methods, 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 whether discrimination, retaliation, or discipline may have improperly influenced management's decision, whether state policy may have been misapplied or unfairly applied, or whether a performance evaluation was arbitrary and/or capricious.³

Further, while grievances that allege retaliation or other misapplication of policy may qualify for a hearing, the grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions."⁴ Typically, then, 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 agency actions that have an adverse effect *on the terms, conditions, or benefits* of one's employment.⁶ Workplace harassment rises to this level if it includes conduct that is "sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment."⁷

Finally, qualification may not be appropriate even if a grievance challenges a management action that might ordinarily qualify for a hearing. For example, an issue may have become moot during the management resolution steps, either because the agency granted the specific relief requested by the grievant or an interim event prevents a hearing officer from being able to grant any meaningful relief. Additionally, qualification may be inappropriate when the hearing officer does not have the authority to grant the relief requested by the grievant and no other effectual relief is available.⁸

In her grievances, the grievant has challenged, generally speaking, an alleged hostile work environment created by her previous supervisor, along with other specific issues such as the denial of equipment for telework. As described above, the grievant is no longer reporting to that supervisor and has accepted a transfer to a new position where she will be given the opportunity to telework. Because of these changes to the grievant's employment, a hearing officer would be unable to provide any effective relief if her December 18, 2020 grievance were qualified for a hearing. A hearing officer does not have authority to award monetary damages or issue disciplinary action against another employee.⁹ If a hearing officer were to find that the grievant's work environment was indeed hostile, the hearing officer could order, for example, the agency to create

² Va. Code § 2.2-3004(B).

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

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 *Strothers v. City of Laurel*, 895 F.3d 317, 331 (4th Cir. 2018) (citing *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57 (1986)).

⁸ *See, e.g.*, EDR Ruling No. 2017-4477; EDR Ruling No. 2017-4509.

⁹ *Grievance Procedure Manual* § 5.9(b).

an environment free of discrimination and retaliation.¹⁰ However, because the grievant has effectively been removed from the allegedly hostile work environment and does not appear to be experiencing the issues challenged in her December 18, 2020 grievance any longer, there is no live issue for a hearing officer to address. Accordingly, the December 18, 2020 grievance does not qualify for hearing under the grievance procedure.¹¹

CONCLUSION

For the reasons described above, the December 18, 2020 grievance does not contain claims for which relief could be granted by a hearing officer. As such, the grievance does not qualify for a hearing under the grievance procedure at this time.¹² This ruling only determines that the grievance does not qualify for a hearing and does not determine that any of the claims asserted were invalid. Further, nothing in this ruling is meant to prevent the grievant from utilizing another appropriate process to challenge the issues raised in these grievances concerning her past allegations of hostile work environment. If the grievant experiences a future adverse employment action that she believes is a continuation of the pattern of events challenged in this grievance or that she feels is otherwise inappropriate, this ruling does not prevent her from raising that issue in a subsequent, timely grievance challenging the related adverse employment action. Should the grievant experience any further allegedly discriminatory, retaliatory, and/or hostile behavior, she should file an appropriate complaint with her agency, DHRM, or other appropriate authority.

EDR's qualification rulings are final and nonappealable.¹³

Christopher M. Grab
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¹⁰ *Rules for Conducting Grievance Hearings* § VI(C)(3).

¹¹ In EDR Ruling Numbers 2021-5183, 2021-5215, EDR included a discussion regarding the grievant's hostile work environment claims, which equally applies to the claims made in her December 18, 2020 grievance inasmuch as the allegations included in these grievances overlap and are part of the same series of events. EDR incorporates that discussion here by reference.

¹² See *Grievance Procedure Manual* § 4.1.

¹³ See Va. Code § 2.2-1202.1(5).