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**QUALIFICATION RULING**

In the matter of the Virginia Department of Transportation  
Ruling Number 2021-5226  
May 11, 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 January 24, 2021 grievance with the Virginia Department of Transportation (the “agency”) qualifies for a hearing. For the reasons discussed below, the grievance is not qualified for a hearing.

FACTS

On or about January 24, 2021, the grievant initiated a grievance alleging issues with her supervisor stemming, in part, from a sequence of interactions in which the grievant states her supervisor accused her of being defensive and not able to receive constructive criticism. The grievant alleges that her supervisor’s behavior was “threatening, verbally abusive (false narrative), discrimination (institutional and racial), and retaliatory.” The grievant’s documentation also alleges a “culture of systemic racism” at the agency, which has affected the grievant and her employment. The grievance includes allegations under the headings of “hypocritical leadership” and “systemic racism, isolation, institutional discrimination, and retaliation.”<sup>1</sup> As relief, the grievant requested better collaboration and communication with her supervisor and for her supervisor to attend diversity and inclusion training. The grievant also sought to be reassigned to a different division within the agency.

The agency responded to the grievance at the single management step, finding that the grievant’s supervisor’s conduct was not “threatening, verbally abusive (false narrative), or retaliatory,” but rather providing constructive feedback. In addition, the agency’s Civil Rights Division reviewed the grievance and found that the allegations “do[] not support a finding of discrimination based on race, gender, or retaliation.” The Civil Rights Division noted that the

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<sup>1</sup> The grievant has additionally submitted documentation regarding events that occurred after she filed her January 24, 2021 grievance. The grievant was apparently involved in trying to organize an employee resource group for African American employees at the agency. The grievant was instructed by agency management to cease her work on that effort. At the time, the agency was beginning other pilot employee resource groups and formalizing the process for how such groups will be vetted, approved by Civil Rights and Human Resources leadership, and operate within the agency.

documented exchange with the grievant's supervisor "exhibits no direct discriminatory animus or inferences," and that there was no evidence of a "tangible adverse impact."

Following the management resolution steps, the agency head declined to qualify the grievance for a hearing. The grievant has appealed that determination to EDR. While this ruling was pending, the grievant submitted her resignation from employment with the agency, effective April 15, 2021.

### 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.<sup>2</sup> Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.<sup>3</sup> 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.<sup>4</sup>

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."<sup>5</sup> 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."<sup>6</sup> Adverse employment actions include agency actions that have an adverse effect *on the terms, conditions, or benefits* of one's employment.<sup>7</sup> 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."<sup>8</sup>

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

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<sup>2</sup> See *Grievance Procedure Manual* § 4.1.

<sup>3</sup> Va. Code § 2.2-3004(B).

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

<sup>5</sup> See *Grievance Procedure Manual* § 4.1(b).

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

<sup>7</sup> *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007) (citation omitted).

<sup>8</sup> *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)).

does not have the authority to grant the relief requested by the grievant and no other effectual relief is available.<sup>9</sup>

As described above, the grievant is no longer employed by the agency. Therefore, a hearing officer would be unable to provide any effective relief if this grievance were qualified for a hearing. A hearing officer does not have authority to award monetary damages or issue disciplinary action against another employee.<sup>10</sup> If a hearing officer were to find that the grievant's work environment was indeed hostile, discriminatory, or retaliatory, the hearing officer could order, for example, the agency to create an environment for the grievant free of discrimination and retaliation.<sup>11</sup> However, because the grievant is no longer an agency employee, there is no such work environment for a hearing officer to address regarding the issues raised in this grievance. As such, the grievance does not qualify for hearing under the grievance procedure.

### CONCLUSION

For the reasons described above, the grievance at issue does not constitute 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.<sup>12</sup> This ruling determines only that the grievance does not qualify for a hearing; it does not address the validity of the grievant's claims. Further, nothing in this ruling is meant to prevent the grievant from utilizing another appropriate process or proceeding to challenge the issues raised in this grievance.

EDR's qualification rulings are final and nonappealable.<sup>13</sup>

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<sup>9</sup> See, e.g., EDR Ruling No. 2017-4477; EDR Ruling No. 2017-4509.

<sup>10</sup> *Grievance Procedure Manual* § 5.9(b).

<sup>11</sup> *Rules for Conducting Grievance Hearings* § VI(C)(3).

<sup>12</sup> See *Grievance Procedure Manual* § 4.1.

<sup>13</sup> See Va. Code § 2.2-1202.1(5).