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QUALIFICATION RULING

In the matter of George Mason University
Ruling Number 2021-5260
May 21, 2021

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether his April 6, 2021 grievance with George Mason University (the “agency” or “university”) qualifies for a hearing. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

On or about March 8, 2021, the university placed the grievant on an administrative suspension with pay while it conducted an investigation into possible misconduct by the grievant. The grievant filed his April 6, 2021 grievance to challenge the extension of the administrative suspension and the university’s alleged failure to provide “written notification of the intended corrective action and a summary or description of the evidence of the offense for which the corrective action is being contemplated.” Following the management resolution steps, the agency head declined to qualify the April 6 grievance for a hearing. 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 or agency 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).

Further, the grievance procedure generally limits grievances that qualify for a hearing 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

In his grievance, the grievant has challenged his administrative suspension with pay. A paid suspension while an agency undertakes an investigation does not generally constitute an adverse employment action.⁷ Further, the grievant has provided no information suggesting that terms, conditions, or benefits of his employment have been adversely impacted in the particular facts of this case. The university’s alleged failure to provide the written notification sought by the grievant was addressed in EDR Ruling Number 2021-5250. As of the date of this ruling, to EDR’s awareness, there is no intended corrective action about which to notify the grievant. The university has described that it will provide such a notice when and if there is such an intended corrective action. The grievant will then have an opportunity to respond and, if a disciplinary action is issued, he will be able to challenge it through a future grievance or other complaint process. As such, EDR cannot find that the grievant has raised an adverse employment action in his April 6, 2021 grievance such that it qualifies for hearing under the grievance procedure.

CONCLUSION

For the reasons expressed above, the facts presented by the grievant in his April 6, 2021 grievance do not constitute a claim that qualifies for a hearing under the grievance procedure at this time.⁸ However, to the extent the grievant receives a disciplinary action or other consequence concerning the matter under investigation, nothing in this ruling prevents the grievant from raising allegations about due process or the agency’s investigation in a grievance or complaint filed about such a future disciplinary action or other consequence.

EDR’s qualification rulings are final and nonappealable.⁹

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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, e.g., *Lacasse v. Didlake, Inc.*, 194 F. Supp. 3d 494, 504 (E.D. Va. 2016).

⁸ See *Grievance Procedure Manual* § 4.1.

⁹ Va. Code § 2.2-1202.1(5).