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QUALIFICATION RULING

In the matter of the Department of Corrections
Ruling Number 2021-5261
July 7, 2021

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Virginia Department of Human Resource Management on whether the February 8, 2021 grievance with the Department of Corrections (the “agency”) qualifies for a hearing. For the reasons discussed below, the grievance is not qualified for a hearing.

FACTS

On or about February 8, 2021, the grievant initiated a grievance for “not receiving COVID-19 documentation.”¹ In the grievance, the grievant describes that he was listed as a close contact, on December 14, 2020, of another employee who apparently tested positive for COVID-19. The grievant states he was allowed to work his shift on December 15 before being notified at the end of the shift that he was to be quarantined for 14 days. While the grievant was out of work, he sought documentation from the facility’s human resources officer, but apparently did not receive a response or documentation. The agency states that multiple attempts were made to contact the grievant, but the phone number on file with human resources was not a working number. The agency states that a notification letter was mailed to the grievant, which it admits was not timely. The agency also provided the grievant with formal written notification during the second step of this grievance.

The grievant states that he tested positive for COVID-19 himself on December 22, 2020. The grievant states that he immediately sent his test results and close contact list to the facility’s human resources officer. The facility’s human resource officer was apparently unable to open the email attachment the grievant sent. The grievant sent a message to the facility’s human resources officer stating that he would fax the close contact list. The agency maintains that such a fax was not received. The agency also indicates that because of when the grievant tested positive,

¹ The grievant also references issues regarding others at his workplace that did not receive documentation or notification. Because the question of what happened with others in the workplace does not pertain “directly and personally” to the grievant’s employment, it is not a matter for which the grievance procedure can be utilized. *Grievance Procedure Manual* § 2.4. Accordingly, the issue of whether documentation was delivered to other employees will not be addressed in this ruling.

individuals on his list of close contacts would not have been required to be notified per guidance from the Centers for Disease Control and Prevention. Following the management resolution steps, the agency head declined to qualify the grievance for a hearing. The grievant has appealed 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.² Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.³ 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.⁴

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions."⁵ 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."⁶ Adverse employment actions include agency actions that have an adverse effect *on the terms, conditions, or benefits* of one's employment.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

The grievant has understandable concerns with how the situation described in his grievance unfolded. Nevertheless, EDR is unable to identify any adverse employment action in this case such that the matter qualifies for a hearing under the grievance statutes. Furthermore, the primary content of this grievance concerns matters that cannot be remedied, such as fixing an untimely

² See *Grievance Procedure Manual* § 4.1.

³ Va. Code § 2.2-3004(B).

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

⁵ See *Grievance Procedure Manual* § 4.1(b).

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

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

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

notification or documentation. Therefore, a hearing officer would be unable to provide any effective relief if this grievance were qualified for a hearing. For example, a hearing officer does not have authority to issue disciplinary action against another employee.⁹ As such, the grievance does not qualify for hearing under the grievance procedure. EDR is hopeful that, because the grievant raised his concerns, the agency will examine the circumstances to make any necessary improvements to notification procedures and ensure that accurate contact information is easily available for all employees.

CONCLUSION

For the reasons described above, the grievance at issue does not raise a sufficient question of an adverse employment action and 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.¹⁰ 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.¹¹

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

¹⁰ *See Grievance Procedure Manual* § 4.1.

¹¹ *See Va. Code* § 2.2-1202.1(5).