

Issue: Qualification-Work Condition/Supervisory Conflict, Management Practices-  
Records, Confidentiality, Access to Policy; Methods/Means-Assignment of Duties;  
Ruling Date: March 19, 2002; Ruling #2001-196; Outcome: not qualified



*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*

QUALIFICATION RULING OF DIRECTOR

In the matter of J. Sargeant Reynolds Community College/ No. 2001-196  
March 19, 2002

The grievant has requested a ruling on whether her August 17, 2001 grievance with J. Sargeant Reynolds Community College ("JSRCC" or "the College") qualifies for a hearing. The grievant claims that (1) the agency has violated state budgetary and accounting policies; (2) her supervisors and co-workers have retaliated against her; (3) she never received an orientation and has been assigned managerial duties that are inconsistent with her employee Work Profile (EWP). For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

The grievant has been employed at JSRCC since March 25, 2000 as an Administrative and Program Specialist III. The grievant's job duties range from secretarial support to maintaining budget records for the division in which she works.

On August 10, 2001, the grievant was provided an updated Employee Work Profile (EWP) which added to her responsibilities the ordering/inventorying/distributing of textbooks. In addition to the updated EWP, the grievant was counseled by her supervisor and received a memorandum regarding perceived performance and behavioral shortcomings.

The College asserts that there have been no violations of state policies, as alleged by the grievant. It notes that her accounting concerns were referred to the College's Director of Finance, who reviewed the division's finances and determined that there was no mismanagement of funds. JSRCC also notes that the division's finances are subject to audit and review by the College's Dean of Finance and Administration, as well as by the Auditor of Public Accounts. Moreover, the College denies having retaliated against the grievant for reporting the alleged policy violations, and asserts that the grievant's new textbook responsibilities are consistent with her EWP.

## DISCUSSION

### *Alleged Budgetary and Accounting Improprieties*

The grievant alleges that employees have misused their American Express cards, managers have failed to report accurate income and expense information, staff is not trained on the proper use of Internal Purchase Requisitions, and that her supervisors have failed at keeping a balanced “checkbook” for the division. She calls these practices a “gross mismanagement of the taxpayers’ money” and accuses her supervisor of purposely falsifying monthly reports.<sup>1</sup> She also asserts that the alleged improprieties make it impossible for her to fulfill the duties of her job, in that she is provided with inaccurate or incomplete information.

While allegations of fiscal improprieties may warrant further investigation, such allegations are not for this agency or its hearing officers to determine. By statute, this Department administers “a comprehensive program of employee relations management”<sup>2</sup> in which grievances must “pertain directly and personally to the employee’s own employment.”<sup>3</sup> Claims related to JSRCC’s budgetary and accounting practices are simply not directly related to the grievant’s employment. These concerns would be more appropriately addressed through the State Fraud and Abuse Hotline, the Department of Accounts or any other agency with oversight of the College’s financial practices.<sup>4</sup> While the grievant asserts that management’s alleged practices hamper her performance and therefore “directly effect her employment,” she is, in essence, challenging the manner in which management is operating its division and responding to her claims of fiscal improprieties. By statute and under the grievance procedure, management reserves the exclusive right to manage the affairs and operations of state government.<sup>5</sup> Therefore, claims relating to the “means, methods, and personnel by which work activities are undertaken” will 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. The grievant here alleges retaliation.

### *Retaliation*

The grievant believes that her supervisors retaliated against her for reporting possible violations of state budgetary and accounting policies. She states that she has been verbally harassed and subjected to “glaring eyes staring back at [her],” meant to

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<sup>1</sup> See October 12, 2001 Memorandum to Grievance File by the grievant.

<sup>2</sup> Va. Code § 2.2-1001(1).

<sup>3</sup> *Grievance Procedure Manual* § 2.4, page 6.

<sup>4</sup> It is worth noting that the College appears to have acted in good faith in responding to the grievant’s claims. Management reported that it spent a great deal of time investigating the grievant’s concerns, and even referred the issue to the Director of Finance, but found the claims to be on the whole unwarranted. While certain employees were, in fact, found to have misused their American Express cards, those employees have been disciplined accordingly.

<sup>5</sup> Va. Code § 2.2-3004 (B).

intimidate her.<sup>6</sup> She refers to one occasion when her supervisor's supervisor told her to "keep her big mouth shut,"<sup>7</sup> and to an email in which he stated, "if you cannot figure out how to work with [your supervisor] in a more respectful and cooperative mode, then I will be forced to make some changes."<sup>8</sup> The grievant also cites to the fact that she has been given additional duties that she believes are managerial and thus outside the scope of her Fiscal Support Technician role. In addition to her concerns about the assignment of duties, the grievant objects to a portion of her EWP, which states that she must "maintain[] a neat, organized work space that is professional in appearance [and] contribute[] to maintenance of common areas to support a neat, professional appearance."<sup>9</sup> She believes that those statements are meant to be harassing and retaliatory.

For a claim of retaliation to qualify for a hearing, there must be evidence raising a sufficient question as to whether (1) the employee engaged in a protected activity;<sup>10</sup> (2) the employee suffered an adverse employment action; and (3) a causal link exists between the adverse employment action and the protected activity. In other words, did management take an adverse action because the employee engaged in the protected activity. If any of these three elements is not met, then the grievance may not qualify for a hearing.

It is questionable whether the grievant engaged in a protected activity. However, assuming that she did, she has not suffered an adverse employment action. An "[a]dverse employment action includes any retaliatory act or harassment if, but only if, that act or harassment results in an adverse effect on the 'terms, conditions, or benefits' of employment."<sup>11</sup> This would encompass any tangible employment action by management that has some significant detrimental effect on factors such as an employee's hiring, firing, compensation, job title, level of responsibility, or opportunity for promotion.<sup>12</sup>

The facts as presented by the grievant indicate that the supervisor's conduct toward her was generally not pleasant. However, the behavior did not adversely effect

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<sup>6</sup> See September 7, 2001 Memorandum from grievant to Dean of JSRCC.

<sup>7</sup> See September 7, 2001 Memorandum from grievant to Dean of JSRCC.

<sup>8</sup> See January 23, 2001 email to the grievant from her supervisor's supervisor, in which he disapproved of her tone in an earlier email that had disagreed with her supervisor's assessment of the division's financial well being.

<sup>9</sup> See Employee Work Profile, dated August 10, 2001.

<sup>10</sup> *Grievance Procedure Manual*, § 1.5, page 4. Only the following are protected activities under the grievance procedure: participating in the grievance procedure; reporting, in good faith, an allegation to the State Employee Fraud, Waste, and Abuse Hotline; reporting a violation of law to a proper authority; or exercising any right other protected by law.

<sup>11</sup> *Von Gunten v. Maryland Dept. of the Environment*, 243 F.3d 858 (4<sup>th</sup> Cir. 2001).

<sup>12</sup> See *Boone v. Goldin*, 178 F.3d 253 (4<sup>th</sup> Cir. 1999).

her employment status, compensation, job title, level of responsibility,<sup>13</sup> or promotional opportunities. Claims of supervisory hostility alone, absent a clear impact on the terms of the grievant's employment, do not present grounds for a qualifiable retaliation claim. Indeed, this Department has long held that general supervisory harassment, however unprofessional, does not in and of itself qualify for a hearing.

The grievant apparently views her supervisor's informal counseling as an improper threat. However, it is management's responsibility to advise employees of observed performance and behavioral problems. The Department of Human Resource Management (DHRM) has sanctioned the use of counseling as an informal means for management to communicate to an employee concern about his or her behavior, conduct, or performance. DHRM does not recognize such counseling as disciplinary action under the Standards of Conduct.<sup>14</sup> For those reasons, this Department has long held that under the grievance procedure, informal supervisory actions, including counseling memoranda and counseling sessions, generally do not qualify for a hearing.

#### *Absence of Orientation*

Finally, the grievant raises the concern that she never received an orientation upon her employment with JSRCC. She cites DHRM Policy 5.05 which states that "agencies should provide, at a minimum, on-the-job training or work-related instruction that prepares employees to perform their current jobs"<sup>15</sup> and notes that there is no orientation program in place for new employees of the College. However, the policy's use of the word "should" would indicate that orientations are advisable but not mandatory. In addition, regardless of the merits of this claim, it is untimely. Under the grievance procedure, grievances must "be presented to management within 30 calendar days of the date the employee knew or should have known of the event that forms the basis of the grievance."<sup>16</sup> The grievant began her employment with JSRCC on March 25, 2000, and she should have learned soon thereafter whether or not there was an orientation.

#### APPEAL RIGHTS AND OTHER INFORMATION

For information regarding the actions the grievant may take as a result of this ruling, please refer to the enclosed sheet. If the grievant wishes to appeal this determination to the circuit court, she should notify the human resources office, in

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<sup>13</sup> The assignment of tasks is management's prerogative, so long as the responsibility is consistent with the employee's role. See DHRM Policy 1.40. The grievant's EWP lists her role as "Administrative and Program Specialist III." Management perceives that the tasks of tracking the managers' budgets and ordering textbooks are well within the grievant's role. This grievance presents insufficient evidence to the contrary. While at one time a manager did indeed order text books, that fact alone does not place the ordering function beyond the scope of an Administrative and Program Specialist III.

<sup>14</sup> DHRM Policy No. 1.60(VI)(C).

<sup>15</sup> DHRM Policy No. 5.05 (III)(B).

<sup>16</sup> *Grievance Procedure Manual* § 2.4, page 6.

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writing, within five workdays of receipt of this ruling. If the court should qualify this grievance, within five workdays of receipt of the court's decision, the agency will request the appointment of a hearing officer unless the grievant notifies the agency that she does not wish to proceed.

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