

Issue: Qualification/Discrimination/Race; Ruling Date: September 19, 2002; Ruling #2002-143;
Agency: Mary Washington College; Outcome: Not qualified.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Mary Washington College/ No. 2002-143
September 19, 2002

The grievant has requested a ruling on whether one of his May 20, 2002 grievances with Mary Washington College (involving denial of a leave request) qualifies for a hearing. The grievant claims racial discrimination and harassment against his supervisor. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

Mary Washington College (agency) employs the grievant as a locksmith.¹ The grievance at issue here claims racial discrimination and harassment. In support of these claims, the grievant asserts that he was denied leave to take his elderly mother to an emergency medical appointment and that the denial was broadcast over the police radio.

DISCUSSION

Although all complaints initiated in compliance with the grievance process may proceed through the three resolution steps set forth in the grievance statute, thereby allowing employees to bring their concerns to management's attention, only certain issues qualify for a hearing. Specifically, claims relating to issues such as the methods, means and personnel by which work activities are to be carried out, including the handling of leave requests, 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 policy may have been misapplied.² In this case, the grievant asserts that management's actions in denying his request for leave and broadcasting that denial over the radio are evidence of racial discrimination and harassment.

For a claim of race discrimination to qualify for a hearing, there must be more than a mere allegation that discrimination has occurred. The grievant must present facts that raise a sufficient question as to whether he was denied leave and this denial was broadcast *because of* his race. A grievant may accomplish this by coming forward with evidence that: (1) he is a member of a protected class; (2) he is qualified for the position; (3) in spite of his qualifications he suffered an adverse employment action; and (4) that he was treated differently than similarly

¹ Since the initiation of this grievance, the grievant has been terminated from employment.

² Va. Code §2.2-3004(A) and (C); *Grievance Procedure Manual* § 4.1(c) page 11.

situated employees outside of the protected class.³ If, however, the agency comes forward with a nondiscriminatory reason for its actions, the grievance should not qualify for hearing, unless there is sufficient evidence that the agency's stated reason is merely a pretext or excuse for improper discrimination.⁴

In this case, the grievant has not met all of the above four elements of a discrimination claim. As an African American, the grievant is a member of a protected class. The grievant is qualified for his position as evidenced by receiving a "Contributor" rating on his most recent performance evaluation. Assuming without deciding that a leave denial, broadcast over the police radio, raises to the level of an adverse employment action,⁵ the grievant has presented no evidence that other employees outside of the protected class have been granted leave under circumstances similar to his. Moreover, the agency has explained, as a legitimate business reason for its denial of leave, that the grievant did not state in his "same day" leave request that the leave was for an *emergency* medical appointment.⁶ Also, while management acknowledges that it was irregular to broadcast a leave denial over the radio, it asserts that this was done in the interest of time to allow the grievant to make alternative arrangements for his mother and that the frequency used was only open to members of the police department. The grievant has offered no evidence to show that the agency's stated reason is merely a pretext or excuse for discrimination (including harassment) on the basis of his race. Therefore, this grievance does not qualify for a hearing.

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, he should notify the human resources office, in 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 he does not wish to proceed.

Claudia T. Farr
Director

Deborah M. Amatulli

³ See *Hutchinson v. INOVA Health System, Inc.*, 1998 U.S. Dist. LEXIS 7723 (E.D. Va. 1998) (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973)).

⁴ *Id.*

⁵ See *Boone v. Goldin*, 178 F.3d 253, 255 (4th Cir. 1999) typical requirements for an "adverse employment action" include, but are not limited to, a decrease in pay or benefits.

⁶ See leave request form dated 5/20/02.

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Employment Relations Consultant