Issue: Qualification: Retaliation/Grievance Activity; Ruling Date: September 24, 2002; Ruling #2002-151; 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. 2002-151
September 24, 2002

The grievant has requested a ruling on whether his June 4, 2002 grievance with Mary Washington College ("agency") qualifies for a hearing. For the reasons discussed below, this grievance does not qualify for a hearing.

DISCUSSION

Mary Washington College employed the grievant as a locksmith.[1] The grievant initiated a grievance on June 4, 2002, challenging management's June 3, 2002 letter, which notified him of a forthcoming disciplinary action. The grievant claims that the agency's letter constitutes improper retaliation for his prior grievance activity.[2]

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;[3] (2) the employee suffered an "adverse employment action;" and (3) a causal link exists between the adverse employment action and the protected activity.[4] In this case, it is undisputed that the grievant engaged in a protected activity by filing previous grievances. However, even if he could show a causal link between his filing of the grievances and management's notification of forthcoming discipline, his grievance would fail to qualify for a hearing for lack of an "adverse employment action."

An adverse employment action includes any action resulting in an adverse effect on the terms, conditions, or benefits of employment.[5] Without more, mere notice of *a*

[1] Since the initiation of this grievance, the grievant's employment has been terminated.
[2] Hearing Decision #5405.
[3] *Grievance Procedure Manual* § 4.1(b)(4), page 10. Only the following activities are protected activities under the grievance procedure: "participating in the grievance process, complying with any law or reporting a violation of such law to a governmental authority, seeking to change any law before the Congress or the General Assembly, reporting a violation to the State Employee Fraud, Waste, and Abuse Hotline, or exercising any right otherwise protected by law."
[4] *See* Dowe v. Total Action Against Poverty in Roanoke Valley, 145 F.3d 653 (4th Cir. 1998).
[5] Von Gunten v. Maryland Department of the Environment, 2001 U.S. App. LEXIS 4149 (4th Cir. 2001)(citing Munday v. Waste Mgmt. Of North America, Inc., 126 F.3d 239, 243 (4th Cir. 1997)).

future disciplinary action does not have a significant detrimental effect on the terms, conditions or benefits of employment.[6] Certainly any subsequently issued formal disciplinary action, such as a written group notice, automatically qualifies for a hearing. Indeed, a written group notice constitutes an adverse employment action because it has a significant detrimental effect on the terms, conditions or benefits of employment.[7] Mere notification that disciplinary action is forthcoming, however, does not rise to the level of an adverse employment action. 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.

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Claudia T. Farr
Director

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Deborah M. Amatulli
Employment Relations Consultant

[6] Boone v. Golden, 178 F.3d 253 (4th Cir. 1999).
[7] E.g., an accumulation of written notices can lead to job termination. See DHRM Standards of Conduct Policy No. 1.60 (VII)(D), effective date 9/16/93.