

Issue: Qualification/Discrimination/Disability; Retaliation/Verbal abuse; Ruling date:
July 17, 2003; Ruling #2003-104; Agency: Department of Mental Health, Mental
Retardation and Substance Abuse Services; Outcome: ancillary issues qualify for hearing



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of MH/MR/SAS
Ruling Number 2003-104
July 17, 2003

The grievant has requested a ruling on whether her March 30, 2003 grievance with the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) qualifies for a hearing. In her grievance, the grievant challenged management's issuance of a Group I Written Notice on February 28, 2003. In addition, she challenged that, beginning with her return to work on limited duty in June 2002, management took actions against her (culminating with the February 28, 2003 disciplinary action) which established a pattern of disability discrimination, retaliation, and verbal abuse.¹

FACTS

The grievant is employed as an Assistant Timekeeper. On May 4, 2002, the grievant seriously injured her back in a motor vehicle accident. On June 4, 2002, she was medically released to return to work with restrictions which were ultimately extended through May 2003. On June 13, 2002, she was issued a Notice of Improvement Needed/Substandard Performance. On August 1, she was issued a Progress Review with a rating of "Below Contributor." On October 1, 2002, she was issued a rating of "Below Contributor" on her annual performance evaluation. On October 21, 2002, the grievant was issued a Group I Written Notice for unsatisfactory job performance. On January 13, 2003, she was issued a Group I Written Notice for unsatisfactory attendance. Finally on February 28, 2003, the grievant was issued a Group I Written Notice for unsatisfactory attendance.

On March 30, 2003, she initiated the present grievance to challenge the February 28, 2003 Group I Written Notice and an alleged pattern of discrimination, retaliation, and verbal abuse, beginning with her return to work on limited duty in June 2002. The grievance with the combined issues proceeded through the respondent steps without resolution and the grievant requested qualification for hearing. In his qualification

¹Workplace violence includes "verbal abuse" that could cause "psychological trauma, such as threats, obscene phone calls, an intimidating presence, and harassment of any nature such as stalking, shouting or swearing." See DHRM Policy 1.80, Definitions, page 1 of 3.

decision, the agency head qualified the disciplinary action but determined that the issues of discrimination, retaliation, and verbal abuse did not qualify for a hearing.

DISCUSSION

When one issue raised in a grievance has been qualified for hearing, it has been the general practice of this Department to send ancillary issues to hearing as well, to help assure a full exploration of what could be interrelated facts and claims.² Given that the formal discipline is qualified for a hearing, this Department deems it appropriate to qualify the ancillary issues of disability discrimination, retaliation, and verbal abuse as well. This qualification ruling in no way determines that the agency engaged in a pattern of unlawful or improper acts against the grievant, only that further exploration of the facts by a hearing officer is appropriate.

Claudia T. Farr
Director

June M. Foy
EDR Consultant, Sr.

² See EDR Ruling No. 2003-034 issued March 3, 2003.