

Issue: Qualification/Notice of Improvement Needed; Ruling Date: December 9, 2003;  
Ruling #2003-448; Agency: George Mason University; Outcome: not qualified  
(keywords = adverse employment action)



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

QUALIFICATION RULING OF DIRECTOR

In the matter of George Mason University  
Ruling Number 2003-448  
December 9, 2003

The grievant has requested a ruling on whether her challenge to a Notice of Improvement Needed, which she raised in her June 26, 2003 grievance with George Mason University (GMU), qualifies for a hearing. The agency has already qualified for hearing the first issue contained in that grievance, a Group I Written Notice. For the following reasons, the issue of her Notice of Improvement Needed does not qualify for a hearing as a separate claim for which relief may be granted. However, to the extent her Notice of Improvement Needed or the contents thereof have any bearing on the merits of her Group I Written Notice, the parties may offer evidence regarding the Notice of Improvement Needed.

FACTS

The grievant is a Virginia Sickness and Disability Plan Program Coordinator. The agency alleges that the grievant knew that a client had erroneously forwarded an Enrollment/Waiver form to the wrong address (which resulted in a loss of healthcare coverage and the potential for back premiums of over \$2500 or more) but failed to take appropriate action. As a result, the agency issued the grievant both a Group I Written Notice and a Notice of Improvement Needed. While the agency has qualified the Group I Written Notice for hearing it denied qualification of the Notice of Improvement Needed on the basis that it is not one of the issues identified by the General Assembly as an issue that can proceed to hearing.

DISCUSSION

Under the grievance procedure, Notices of Improvement Needed do not qualify for hearing unless there is evidence raising a sufficient question as to whether, through the issuance of the Notice, management took an "adverse employment action" against the grievant affecting the terms, conditions, or benefits of his employment.<sup>1</sup> A Notice of

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<sup>1</sup> *Grievance Procedure Manual* § 4.1, pages 10-11. An adverse employment action is defined as a "tangible employment act constituting a significant change in employment status, such as hiring, firing,

Improvement Needed, in and of itself, does not have a significant detrimental effect on the terms, conditions, or benefits of employment.<sup>2</sup> Moreover, the General Assembly has limited issues that may be qualified for a hearing to those that involve adverse employment actions.<sup>3</sup> In this case, the Notice of Improvement Needed did not, by itself, constitute an adverse employment action therefore it cannot qualify for a hearing as a separate claim for which relief can be granted.<sup>4</sup> Again, as noted above, to the extent that the Notice of Improvement Needed or the contents thereof have any bearing on the merits of the Group I Written Notice, the parties may offer evidence regarding the Notice of Improvement Needed at hearing.<sup>5</sup>

### 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 the qualification determination to the circuit court, the grievant 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 wishes to conclude the grievance and notifies the agency of that desire.

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Claudia T. Farr  
Director

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failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits." Burlington Industries, Inc. v. Ellerth, 118 S. Ct. 2257, 2268 (1998). An adverse employment action includes any action resulting in an adverse effect on the terms, conditions, or benefits of employment. Von Gunten v. Maryland Department of the Environment, 243 F.3d 858, 866 (4<sup>th</sup> Cir. 2001)(citing Munday v. Waste Mgmt. Of North America, Inc., 126 F.3d 239, 243 (4<sup>th</sup> Cir. 1997)). See EDR Rulings #2002-007 and #2002-069.

<sup>2</sup> See Boone v. Golden, 178 F.3d 253 (4<sup>th</sup> Cir. 1999).

<sup>3</sup> Va. Code § 2.2-3004(A).

<sup>4</sup> This Department notes, however, that should the Notice of Improvement Needed later serve to support an adverse employment action against the grievant, she may offer evidence as to the merits of the Notice of Improvement Needed through a subsequent grievance challenging the adverse employment action. Cf. EDR Rulings 2002-069 and 2002-219.

<sup>5</sup> The Administrative Hearing Officer assigned to hear the issue of the Group II Written Notice will make all determinations on the admissibility of proffered evidence. Such determinations will not be disturbed absent a showing that the hearing officer abused his discretion.