Issue: Qualification/grievance #1 issues are non-selection, retaliation, discrimination and misapplication of policy; grievance #2 issues are performance evaluation, retaliation, misapplication of policy; Ruling Date: December 29, 2004; Ruling #2004-624, 2004-648; Agency: Department of Mental Health, Mental Retardation and Substance Abuse Services; Outcome: grievance #1 is qualified, grievance #2 is not qualified

COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Mental Health, Mental Retardation
and Substance Abuse Services
Ruling Numbers 2004-624 and 2004-648
December 29, 2004

The grievant has requested rulings on whether his grievances, one initiated on September 22, 2003 and one on November 14, 2003, with the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS or the agency) qualify for hearing.

In his September 22, 2003 grievance (Grievance #1), the grievant claims that his non-selection for a management position is (1) the latest example of retaliation for a 1997 grievance; (2) discriminatory; and (3) in violation of state and/or agency policy. In his November 14, 2003 grievance (Grievance #2), the grievant claims that his 2003 performance evaluation is (1) arbitrary or capricious; (2) retaliatory; and (3) a misapplication or violation of policy.

FACTS

The grievant is employed as a Security Officer Supervisor with the DMHMRSAS. On November 10, 1997, the grievant initiated a grievance with the agency claiming that his performance evaluation was arbitrary and capricious and retaliatory. In a March 13, 1998 decision, the hearing officer found in favor of the grievant and directed the agency to revise the grievant's 1997 performance evaluation. Approximately two months after the March 13, 1998 hearing decision, the security manager responsible for the lowered 1997 performance evaluation (Security Manager 1) was removed from his position.

Since the grievant's 1998 favorable hearing decision and the removal of Security Manager 1, the grievant alleges that management has engaged in a continual pattern of retaliation, taking numerous retaliatory acts against him. In February 1999, an investigation into the Security Department's performance, and specifically the grievant's shift, was initiated as a result of a "hotline complaint." Members of the investigative team allegedly included Security Manager 1 and other former employees of the security department. The grievant contends that he was the target of the investigation due to his prior grievance activity and that the "hotline complaint" actually came from those conducting the investigation. According to the agency, the

investigation was properly conducted and resulted in no personnel actions against the grievant or others within the security department. The grievant contends that even though no personnel actions were taken, the investigation cast suspicion on his character and continually serves to stigmatize him and impede his career progression. For example, shortly after the conclusion of the investigation into the security department on March 3, 1999, the grievant interviewed for the position of Security Manager, but was not the successful candidate. However, it should be noted that also in March of 1999, the grievant was promoted to his current position of security officer supervisor.

On October 1, 1999, the grievant sent a memorandum to head of the security department (Security Department Head) and the Facility Director detailing the alleged retaliatory acts taken during the course of and subsequent to the investigation of the security department and his concern that he is being subjected to a "stressful and undesirable working environment." Unsatisfied with the response to his October 1, 1999 memorandum,[1] the grievant sent a subsequent memorandum to the DMHMRSAS agency head on February 11, 2000 informing him of management's failure to act to resolve the alleged hostile work environment in which he works. The grievant claims that he does not remember receiving a response from the agency head regarding the allegations asserted in his February 11th memorandum.

On December 16, 1999, the grievant again interviewed for the position of Security Manager, but was not the successful candidate. The grievant contends that his non-selection resulted from his past grievance activity, the investigation into the security department and the bias and prejudice of an interview panel member, namely the Security Department Head, who was witness to the events surrounding the grievant's 1997 grievance and the investigation into the grievant's shift as well as a panel member in the 1998 selection process for the position of Security Manager.

Over the course of the next couple of years, the grievant alleges the retaliation continued by management (1) denying him a competitive salary offer, while two other security employees received such offers; (2) denying him training opportunities, unlike others; (3) denying his request to work 10 hour shifts; and (4) requiring him to always work third shift. In response to the grievant's allegations regarding his denial of a competitive salary match, management contends that (1) the grievant was denied a competitive salary match because he was asking for a match plus an additional 10%; (2)

[1] On November 5, 1999, the grievant received a memorandum from the Security Department Head. In the memorandum, the Security Department Head disavows any involvement in investigations, except in rare circumstances and states that his role is to take appropriate action upon completion of the investigation. Additionally, the Security Department Head acknowledges the grievant's concern about alleged biased individuals formerly associated with the security department conducting investigations into its performance and claims to have communicated the concern to the Facility Director. On November 15, 1999, the grievant requested a meeting with the Facility Director to discuss the issues raised in the October 1, 1999 memorandum. The grievant claims that he received no response from the Facility Director regarding this request.

budget constraints restricted the agency's ability to offer the grievant a competitive match; (3) one of the previous competitive offers to which the grievant refers was instigated at the recommendation of management, not the employee and thus unlike the grievant's request; and (4) the other competitive match to which the grievant refers was never reviewed due to the employee's failure to submit the appropriate paperwork. Further, the agency maintains that the grievant was denied requests for training opportunities because the requested classes were not "germane to the Security Department's mission" at the grievant's current facility[2] and the courses approved for others were different courses than those requested by the grievant. The grievant alleges that the courses approved for others could also be considered irrelevant to the Security Department's mission. For example, in December 2003, an employee at the grievant's facility attended a course entitled "Flying While Armed." Finally, the agency asserts that it is within management's discretion to approve changes in work schedule and that four 10 hour work days could not be justified as a benefit to the facility, even though such a schedule had been in place previously. Moreover, the agency claims that the grievant is always required to work third shift because he is the supervisor of that shift.

On July 22, 2003, the grievant interviewed for the position of Security Manager for a third time. Again, the grievant was not the successful candidate. The grievant's non-selection for the position of Security Manager is the subject of Grievance #1. In Grievance #1, the grievant claims that his non-selection for the position of Security Manager on three different occasions is retaliation for previous grievance activity, the candidate selected in the 2003 selection process was predetermined and the grievant was discriminated against on the basis of age in the 2003 selection process. In support of his pre-selection claim, the grievant asserts that the recruitment announcement and position description were changed to allow the agency to put the selected candidate in the position[3] and that the selected candidate, new to the management field, is more likely to do whatever necessary to please upper management. To support his claim of age discrimination, the grievant merely states that the selected candidate is considerably younger than him.

Moreover, the grievant claims his non-selection for the position of Security Manager is a misapplication or unfair application of state and/or agency policy. Specifically, the grievant argues that he was not given a fair opportunity to compete

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[2] On August 6, 2002, the grievant was denied a request to attend a Firearms and Simunitions Instructor Training course. Further, on August 29, 2003 and again on March 5, 2004, the grievant was told he could not attend a Basic Internal Affairs class due to the lack of funding and need for that type of training at the grievant's facility. Finally, on August 31, 2004, the grievant was denied a request to attend a class on Child Abuse & Exploitation Investigative Techniques.

[3] For example, the 1999 Security Manager position announcement says "[e]xtensive experience in Security Administration/Management or related law enforcement experience is essential" and requires "knowledge and demonstrated skills in management, supervision and leadership related to security and public safety functions." In contrast, the 2003 Security Manager position announcement seems to require less management experience and states that the candidate should have "[k]knowledge of and demonstrated skills in management, supervision and leadership related to security and public safety functions."

because there of the four panel members were the same as for the previous two interviews for the position of Security Manager. Additionally, the grievant argues that selection was based solely on six interview questions, not qualifications such as training or management experience and that the interview evaluation forms completed by the interview panel members were lacking for failure to include all information presented by the grievant during his interview. Moreover, the grievant claims that denying him the opportunity to serve as acting Security Manager affected his chances of selection. Finally, the grievant claims that although he was interviewed for the Security Manager position, the panel determined prior to the interview that the grievant would not be selected for the position. In support of his claim, the grievant asserts that prior to his interview, a personnel department employee allegedly told another employee that the grievant was not wanted in the Security Manager position. The statements made by the personnel department employee were confirmed by the employee witness during this Department's investigation.

The grievant received his annual performance evaluation on October 15, 2003. The 2003 performance evaluation reflects an overall rating of "Contributor" with "Contributor" ratings in all marked elements of the evaluation. Dissatisfied with the evaluation, the grievant initiated Grievance #2 on November 14, 2003 challenging the evaluation as arbitrary and capricious and completed as such in retaliation for his previous grievance activity. In addition, the grievant alleges that management has violated the standards of conduct policy and other applicable policies and procedures in its ratings of his job performance.[4] Moreover, although he is satisfied with his overall rating of "Contributor," the grievant maintains that he should have received an "Extraordinary Contributor" rating in three elements where he was rated "Contributor" and points out the discrepancy in his ratings on his 2003 performance evaluation and ratings received in previous years.[5]

Since the initiation of his November 14, 2003 grievance, the grievant claims that retaliatory behavior has continued.[6] For instance, the grievant asserts that the current Security Manager commented to other employees that he does not like the grievant and was angry when he was told he could not get rid of the grievant. The Security Manager's comments regarding his dislike of the grievant were confirmed by a co-worker during this Department's investigation. Additionally, the grievant claims that despite his doctor's certificate that the grievant was able to return to full duty following his absence for a work-related injury, management sent the doctor a job analysis for the grievant's position and asked the doctor to review the analysis and advise whether the

[4] In support of his claim that management has violated policy, the grievant asserts that the supervisor who conducted his evaluation was only in the supervisory position for six weeks prior to the evaluation and had little or no contact with the grievant during the performance cycle.

[5] For instance, although the grievant's overall rating in 2001 and 2002 was "Contributor," he received "Extraordinary Contributor" ratings in some of the element portions of these evaluations.

[6] It should be noted that only the events that occurred 30 days prior to the initiation of the September 22nd grievance can form the basis of a claim upon which a hearing officer may potentially award relief. While events that occurred outside of the timeframe may not serve as a basis for relief due to the grievance procedure's 30-day initiation rule, they may nevertheless be introduced as background evidence.

grievant is capable of performing all the functions listed. The grievant claims that managements' actions are a further attempt to get rid of him.

DISCUSSION

Retaliation – Grievance #1

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;[7] (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, whether management took an adverse action because the employee had engaged in the protected activity. If the agency presents a nonretaliatory business reason for the adverse action, the grievance does not qualify for a hearing, unless the employee presents sufficient evidence that the agency's stated reason was a mere pretext or excuse for retaliation.[8] Evidence establishing a causal connection and inferences drawn therefrom may be considered on the issue of whether the agency's explanation was pretextual.[9]

The grievant engaged in a protected activity when he filed a grievance on November 10, 1997. Furthermore, not being selected for a position could be viewed as an adverse employment action. The agency provided a nonretaliatory business reason for the grievant's non-selection: the candidate selected for the Security Manager position demonstrated the necessary knowledge, skills and abilities and was the best suited for the job. However, after careful review of the evidence, this Department concludes that, based on the totality of the circumstances, the grievant has demonstrated that sufficient questions of fact exist with respect to his retaliation claim. The hearing officer, as a fact finder, is in a better position to determine whether retaliatory intent contributed to the grievant's nonselection. As such, this issue qualifies for hearing. We note, however, that this qualification ruling in no way determines that the agency's actions with respect to the grievant were retaliatory or otherwise improper, only that further exploration of the facts by a hearing officer is appropriate.

Alternative Theories – Grievance #1

The grievant has advanced alternative theories related to the agency's decision not to select him for the Security Manager position, including allegations that the

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[7] *See Grievance Procedure Manual* §4.1(b)(4). 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."

[8] *See* Rowe v. Marley Co., 233 F.3d 825, 829 (4th Cir. 2000); Dowe v. Total Action Against Poverty in Roanoke Valley, 145 F.3d 653, 656 (4th Cir. 1998).

[9] *See* Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 255, n. 10, 101 S. Ct. 1089 (Title VII discrimination case).

agency misapplied or unfairly applied state and agency policy, age discrimination and pre-selection. Because the issue of retaliation qualifies for a hearing, this Department deems it appropriate to send all alternative theories advanced in Grievance #1 for adjudication by a hearing officer to help assure a full exploration of what could be interrelated facts and issues.

Grievance #2

As stated above, for a claim of retaliation to qualify for hearing, there must be evidence raising a sufficient question that the grievant suffered an adverse employment action. In addition, the General Assembly has limited other issues (e.g. misapplication of policy and arbitrary and capricious performance evaluation) that may be qualified for a hearing to those that involve "adverse employment actions."[10] The threshold question then becomes whether or not the grievant has suffered an adverse employment action. An adverse employment action is defined as a "tangible employment act constituting a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits."[11]

Thus, for any of the grievant's claims in Grievance #2 to qualify for hearing, the action taken against the grievant must result in an adverse effect *on the terms, conditions, or benefits* of his employment.[12] A satisfactory performance evaluation, although lower than previous evaluations, is not an adverse employment action where the employee presents no evidence that the evaluation detrimentally affected the terms and conditions of his employment.[13] In this case, although the grievant disagrees with portions of his 2003 performance evaluation, the overall rating and the element ratings were generally positive. Most importantly, the grievant has presented no evidence that the 2003 performance evaluation has adversely altered the terms or conditions of his employment. In fact, during this Department's investigation, the grievant confirmed that no aspect of his employment has been negatively affected by the 2003 performance

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[10] Va. Code § 2.2-3004(A).

[11] Burlington Industries, Inc. v. Ellerth, 118 S. Ct. 2257, 2268 (1998).

[12] Von Gunten v. Maryland Department of the Environment, 243 F.3d 858, 866 (4th Cir 2001)(citing Munday v. Waste Management of North America, Inc., 126 F.3d 239, 243 (4th Cir. 1997)).

[13] *See* Rennard v. Woodworker's Supply, Inc., 101 Fed. Appx. 296, 2004 U.S. App. LEXIS 11366 (10th Cir. 2004). *See also* James v. Booz-Allen & Hamilton, Inc., 368 F.3d 371 (4th Cir. 2004)(The court held that although the plaintiff's performance rating was lower than the previous yearly evaluation, there was no adverse employment action as the plaintiff failed to show that the evaluation was used as a basis to detrimentally alter the terms or conditions of his employment, the evaluation was generally positive, and he received both a pay-raise and a bonus for the year.). Brown v. Brody, 199 F.3d 446 (D.C. Cir 1999), "[A] thick body of precedent . . . refutes the notion that formal criticism or poor performance evaluations are necessarily adverse actions." Brown, 199 F.3d at 458 citing to Mattern v. Eastman Kodak Co., 104 F.3d 702, 708, 710 (5th Cir. 1997); Rabinovitz v. Pena, 89 F.3d 482, 486, 488-90 (7th Cir. 1996); Smart, 89 F.3d at 442-43; Kelecic v. Board of Regents, 1997 U.S. Dist. LEXIS 7991, No. 94 C 50381, 1997 WL 311540, at *9 (N.D. Ill. June 6, 1997); Lucas v. Cheney, 821 F. Supp. 374, 375-76 (D. Md. 1992); Nelson v. University of Me. Sys., 923 F. Supp. 275, 280-82 (D. Me. 1996); cf. Raley v. St. Mary's County Comm'rs, 752 F. Supp. 1272, 1278 (D. Md. 1990).

evaluation.[14] Accordingly, Grievance #2 does not qualify for hearing.[15] We note, however, that should the 2003 performance evaluation somehow later serve to support an adverse employment action against the grievant, (e.g., demotion, termination, suspension and/or other discipline) the grievant may address the underlying merits of the evaluation through a subsequent grievance challenging the related adverse employment action. In addition, the grievant may introduce the 2003 performance evaluation at the hearing on Grievance #1 as additional evidence of alleged retaliatory intent.

EDR notes that this Department's denial of qualification of the performance evaluation is in contrast to its earlier qualification in 1998 of a similar[16] evaluation issued in 1997. EDR believes that an explanation for the apparent inconsistency is warranted.

In the 1998 qualification ruling, a former EDR Director did not address the issue of whether the grievant had suffered an "adverse employment action." Since that time, the current EDR Director has adopted a threshold requirement that in order to advance a grievance to hearing, an employee must have suffered an "adverse employment action," as defined by the well-settled body of employment law. As explained below, EDR believes that this requirement is not only more consistent with well-settled employment law principles but, more importantly, with the intent of the drafters of the grievance statutes.

The pertinent grievance statute provision states that: "A grievance qualifying for a hearing shall involve a complaint or dispute by an employee relating to the following *adverse employment actions* in which the employee is personally involved, including but not limited to" formal disciplinary actions, the misapplication or unfair application

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[14] Specifically, during this Department's investigation, the grievant confirmed that he was satisfied with his overall rating of Contributor, no other action was taken against him in conjunction with the performance evaluation, and that he received the annual pay raise given to those state employees that received a rating of Contributor or higher on their annual performance evaluation.

[15] Although this grievance does not qualify for an administrative hearing under the grievance process, the grievant may have additional rights under the Virginia Government Data Collection and Dissemination Practices Act (the Act). Under the Act, if the grievant gives notice that he wishes to challenge, correct or explain information contained in his personnel file, the agency shall conduct an investigation regarding the information challenged, and if the information in dispute is not corrected or purged or the dispute is otherwise not resolved, allow the grievant to file a statement of not more than 200 words setting forth his position regarding the information. Va. Code § 2.2-3806(A)(5). This "statement of dispute" shall accompany the disputed information in any subsequent dissemination or use of the information in question. Va. Code § 2.2-3806(A)(5).

[16] In a 1997 grievance, the grievant challenged his 1997 performance evaluation. Under the rating system then in effect, the grievant received an overall rating of "Meets Expectations." For one of the seven job elements the grievant received a rating of "Exceeds expectations" and on the remaining six elements, he received ratings of "Meets Expectations." The previous year, the grievant received an overall rating of "Exceeds Expectations." The 1996 evaluation rated the grievant as "Exceptional" for two elements, "Exceeds Expectations" for two others, and "Meets Expectations" for the remaining three. EDR qualified the 1997 grievance for hearing.

of all written personnel policies, discrimination, arbitrary or capricious performance evaluations, and acts of retaliation.[17] One interpretation of this statutory provision, adopted by at least one circuit court, is that all formal disciplinary actions, misapplications of policy, acts of discrimination, and so on, shall advance to hearing regardless of the degree of harm (if any) to the employee.[18] Neither the Virginia Court of Appeals nor the Virginia Supreme Court have interpreted this provision, however. In the absence of binding precedent, EDR believes that a reasonable reading of the statute is that the legislature intended to preclude qualification of grievances that do not involve an "adverse employment action," as defined by the well-established body of employment law. EDR believes that the "list" of actions that may proceed to hearing (e.g. formal discipline, misapplication of policy, and so on) is intended as a non-exclusive[19] catalog of examples of actions where adverse employment actions may be found, not an inventory of per se "adverse employment actions."

We note that in drafting the pertinent statutory provision, the legislature elected to utilize a term of art ("adverse employment action"), which has a well-settled meaning within the realm of employment law, to describe the sorts of grievances that can proceed to hearing.[20] While employment statutes do not always use the express term "adverse employment action" within the confines of their text, the requirement of an "adverse employment action" before liability attaches has been commonly embraced by courts adjudicating claims arising under various employment statutes such as Title VII of the Civil Rights Act of 1964 (Title VII),[21] the Fair Labor Standards Act (FLSA),[22] and the Uniform Services Employment and Reemployment Rights Act of 1994 (USERRA).[23] This Department believes that by electing to include a well-

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[17] Va. Code §2.2-3004(A), (emphasis added).
[18] *See* Grievance Appeal, Case No. CL03-9559 (16th Judicial Circuit 2003).
[19] The statute expressly states that the list of examples of actions where adverse employment actions may be found "includ[es] but [is] not limited to" formal disciplinary actions, the misapplication or unfair application of all written personnel policies, discrimination, arbitrary or capricious performance evaluations, and acts of retaliation.
[20] "It is a basic rule of statutory construction that a word in a statute is to be given its everyday, ordinary meaning *unless* the word is a word of art." *Stein v. Commonwealth, 12 Va. App. 65, 69, 402 S.E.2d 238, 241 (1991)*(citation omitted, emphasis added).
[21] Boone v. Goldin, 178 F.3d 253, 256 (4th Cir. 1999) citing to St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 523-24, 125 L. Ed. 2d 407, 113 S. Ct. 2742 (1993).
[22] Gotay v. Becton Dickinson Caribe Ltd., 375 F.3d 99 (1st Cir. 2004). The elements of a retaliation claim under the FLSA require, at a minimum, a showing that (1) the plaintiff engaged in a statutorily protected activity, and (2) his employer thereafter subjected him to an adverse employment action (3) as a reprisal for having engaged in protected activity. Gotay, 375 F.3d at 102 citing to Blackie v. Maine, 75 F.3d 716, 722 (1st Cir. 1996).
[23] USERRA is the most recent in a series of laws protecting veterans' employment and reemployment rights dating from the Selective Training and Service Act of 1940. USERRA's anti-discrimination provision prohibits an employer from denying initial employment, reemployment, retention in employment, promotion, or any benefit of employment to a person on the basis of membership, application for membership, performance of service, application for service, or obligation of service. 38 U.S.C. § 4311(a). Also, an employer must not retaliate against a person by taking *adverse employment action* against that person because he or she has taken an action to enforce a protection afforded under

established term of art in the grievance statute, the legislature intended that the commonly understood legal meaning of that phrase would apply.[24]

Moreover, we believe it reasonable to conclude that when the legislature, in 1995, added the "adverse employment action" language to the statute, it did so intending to narrow the statute by limiting hearings to only employees who had suffered an "adverse employment action." Prior to that time, the statute allowed *any* act of formal discipline, discrimination, retaliation, misapplication of policy, or arbitrary performance evaluation to advance to hearing. Prior to the 1995 amendments, the list of qualifiable actions (formal discipline, discrimination, and so on) was *not* prefaced by the "adverse employment action" language. Had the legislature intended that *all* acts of misapplication of policy, retaliation, and so on, continue to qualify for hearing, no change to the statute by adding the term "adverse employment action" would have been necessary--all such claims could advance to hearing under the then existing, non-limiting, pre-1995 language.[25]

For all these reasons, this Department finds it reasonable to conclude that while virtually all employee concerns may proceed through the management resolution steps, the legislature intended that only actions that adversely affect the terms and conditions of employment should advance to hearing.[26]

CONCLUSION – GRIEVANCE #1

For the reasons discussed above, this Department concludes that the grievant's September 22, 2003 grievance (Grievance #1) is qualified and shall advance to hearing. By copy of this ruling, the grievant and the agency are advised that the agency has five workdays from receipt of this ruling to request the appointment of a hearing officer.

USERRA. Id. at § 4311. *See also* Rogers v. City of San Antonio, 2004 U.S. App. LEXIS 24831 (5th Cir. 2004).

[24] Recall that an "adverse employment action" is defined as a "tangible employment act constituting a significant change in employment status, such as hiring, firing, 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" must result 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 (4th Cir. 2001)(citing Munday v. Waste Mgmt. Of North America, Inc., 126 F.3d 239, 243 (4th Cir. 1997)).

[25] Under settled rules of statutory construction, legislative enactments "should be interpreted, if possible, in a manner which gives meaning to every word," Monument Associates v. Arlington County Board, 242 Va. 145, 149, 408 S.E.2d 889, 891 (1991); "[E]very part [of a statute] is presumed to have some effect and is not to be disregarded unless absolutely necessary." Commonwealth of Virginia v. Zamani, 256 Va. 391, 395; 507 S.E.2d 608, 609 (1998) citing to VEPCO v. Citizens for Safe Power, 222 Va. 866, 869, 284 S.E.2d 613, 615 (1981).

APPEAL RIGHTS AND OTHER INFORMATION - GRIEVANCE #2

For information regarding the actions the grievant may take in Grievance #2 as a result of this ruling, please refer to the enclosed sheet. If the grievant wishes to appeal the qualification determination on Grievance #2 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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Jennifer S.C. Alger
EDR Consultant