

Issue: Qualification/Work Conditions-Supervisor/Employee Conflict, Hours of Work;
Ruling Date: August 6, 2004; Ruling #2004-712; Agency: Department of Corrections;
Outcome: not qualified



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Corrections
Ruling Number 2004-712
August 6, 2004

The grievant has requested a ruling on whether his December 2, 2003 grievance with the Department of Corrections (DOC or the agency) qualifies for hearing. The grievant alleges that the “numerous abrupt, impersonal schedule changes” he has encountered since 2001 are unfair and constitute harassment. For the reasons discussed below, this grievance does not qualify for hearing.

FACTS

The grievant is employed as a Corrections Lieutenant with DOC. It appears that during the past few years, the grievant’s normal work schedule has been changed several times. The grievant claims that the schedule changes most often occur at the last minute and without first consulting the grievant as to his availability, which affects his ability to be at home with his child. Additionally, the grievant claims that he is being harassed and treated unfairly, because other similarly-situated employees in the agency are not subject to the same abrupt schedule changes. The agency claims that the grievant is not being treated any differently than other similarly-situated employees.

DISCUSSION

By statute and under the grievance procedure, management is reserved the exclusive right to manage the affairs and operations of state government.¹ Thus, claims relating to issues such as the method, means and personnel by which work activities are to be carried out 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 influenced management’s decision, or whether state policy may have been misapplied or unfairly applied.² In this case, the grievant asserts that the numerous, temporary changes in his schedule are unfair and constitute harassment by his supervisor.

¹ See Va. Code § 2.2-3004(B).

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

Under state policy, DOC has been granted complete discretion to establish schedules for employees according to its perceived needs.³ This discretion is limited only by DOC's own policies and procedures. DOC policies clearly give management the prerogative to adjust schedules.⁴

Further, the General Assembly has limited issues that may qualify for a hearing to those that involve "adverse employment actions."⁵ 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."⁶

Here, there is no evidence that the grievant's temporary schedule changes resulted in a substantive change in his duties or responsibilities. It appears that his job duties remained the same and there was no change in the grievant's level of responsibility, compensation, benefits, or opportunity for promotion. Schedule changes that result in personal inconvenience do not constitute an adverse employment action.⁷ Therefore, although the schedule changes and their effect on the grievant's personal life are understandably disappointing to the grievant, they cannot be viewed by any reasonable fact finder as an adverse employment action for which relief may be granted by a hearing officer, because the schedule changes have had no detrimental effect on the grievant's employment status.

Moreover, while all grievances may proceed through the management resolution steps, to qualify for a hearing, claims of supervisory harassment must involve "hostility or aversion towards a person on the basis of race, color, national origin, age, sex, religion, disability, marital status, or pregnancy."⁸ Here, the grievant has not alleged that management's actions were based on any of these factors. Rather, the facts cited in support of the grievant's claim can best be summarized as describing general work-related conflict between the grievant and his supervisor. Such claims of supervisory conflict are not among the issues identified by the General Assembly that may qualify for a hearing.⁹

We wish to note that mediation may be a viable option to pursue. EDR's mediation program is a voluntary and confidential process in which one or more

³ See Department of Human Resource Management (DHRM) Policy 1.25, *Hours of Work*.

⁴ DOC Policy 5-12.7.

⁵ Va. Code § 2.2-3004(A).

⁶ *Burlington Industries, Inc. v. Ellerth*, 118 S. Ct. 2257, 2268 (1998).

⁷ See *Reeves v. Virginia Department of Correctional Education, et al.*, 2003 WL 76117 (W.D. Va., 1993) (a daily or every other day change in schedule does not constitute an adverse employment action); *see also, Crady v. Liberty National Bank and Trust Co.*, 993 F.2d 132, 136 (7th Cir. 1993) (an employment action that is merely inconvenient is not an adverse employment action); *Sanchez v. Denver Public Schools*, 164 F.3^d 527, 532 (10th Cir. 1998) (increased commute distance without more is not an adverse employment action).

⁸ Department of Human Resource Management (DHRM) Policy 2.30, *Workplace Harassment*.

⁹ See Va. Code § 2.2-3004 (A).

mediators, neutrals from outside the grievant's agency, help the parties in conflict to identify specific areas of conflict and work out possible solutions that are acceptable to each of the parties. Mediation has the potential to effect positive, long-term changes of great benefit to the parties and work unit involved.

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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