

Issue: Qualification/hostile work environment/record disclosure/confidentiality; Ruling Date: November 3, 2004; Ruling # 2004-837; Agency: Virginia Polytechnic Institute and State University; Outcome: not qualified



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Virginia Polytechnic Institute and State University

Ruling No. 2004-837

November 3, 2004

The grievant has requested a ruling on whether her May 27, 2004 grievance with Virginia Polytechnic Institute and State University (the agency) qualifies for a hearing. The grievant claims that the agency has subjected her to a hostile work environment and misapplied agency policy. For the following reasons, this grievance does not qualify for a hearing.¹

FACTS

At the time of the events giving rise to the grievance, the grievant was employed by the agency as a Development Associate in Department E. The grievant began working in this position on April 5, 2004, after previously working in a similar position in another agency department.²

The grievant alleges that shortly after she began working in Department E, her supervisors began subjecting her to a hostile work environment and treating her less favorably than other employees in the department. In particular, the grievant claims that her supervisors unfairly criticized her work performance, treated her in a rude and demeaning manner, expected her to follow policies and rules that other employees were not expected to follow, and required her to check her e-mail while on sick leave. The grievant also claims that her supervisors violated state and agency policy by sharing with her co-worker a copy of the "Discussion Points" used in a meeting between the grievant and her supervisors, by failing

¹ An additional issue identified by the grievant in her Form A is "fraud." The grievant states that her supervisor and co-worker inappropriately used an office toll-free number, and that she believes this conduct constitutes fraudulent misuse of state funds. However, a claim by a grievant regarding another employee's fraudulent conduct is not subject to the grievance procedure, unless the grievant's own employment was adversely affected as a result of the fraud (for example, if the grievant were retaliated against for reporting fraud), a circumstance not alleged here. See *Grievance Procedure Manual* § 2.4 (an employee's grievance must pertain directly and personally to the employee's own employment). Suspected fraud may be reported to the Commonwealth's Fraud, Waste and Abuse Hotline at 1-800-723-1615.

² Since initiating her grievance, the grievant has transferred to a third agency department. The grievant states that her new position pays approximately \$10,000 less than her position in Department E.

to provide her with a copy of her job description, and by failing to pay her overtime and mileage for use of her personal vehicle on agency business.

The grievant initiated the present grievance on May 27, 2004. During the agency resolution steps, the agency agreed to pay the grievant for the overtime and mileage reimbursement to which she claimed she was entitled, but denied the grievant's other requests for relief. The grievant has asked that this Department qualify her grievance for hearing.

DISCUSSION

By statute and under the grievance procedure, management is reserved the exclusive right to manage the affairs and operations of state government.³ 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.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

In this case, the grievant asserts that the agency misapplied and/or unfairly applied policy by divulging confidential personnel information and failing to provide her with a job description for her position. She also alleges that her supervisors' harassment created a hostile work environment. Here, however, there is no evidence that the agency's alleged disclosure of confidential personnel information and failure to provide the grievant with a job description constitute adverse employment actions. The personnel information at issue was comprised of a single sheet of paper, on which were listed the following items discussed at a meeting between the grievant and her supervisors:

Office communication:

- Talking with [co-worker]
- Phone coverage
- Lunch hour
- Assignments (shredding, expense reports, labels, deceased files)
- Job satisfaction (begin with [supervisor])
- Work study (coordinate with [co-worker])

Team effort:

- Do you feel a part of the team?

³ See Va. Code § 2.2-3004(B).

⁴ Va. Code § 2.2-3004 (A) and (C); *Grievance Procedure Manual* § 4.1 (c).

⁵ Va. Code § 2.2-3004(A).

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

Action items:

- More direction/Establish a new account
- Office procedure book ([co-worker])—Developing travel, event checklists
- Purchase printer ([grievant])
- Open discussion with [co-worker] and [grievant]
- Office location—consideration

Certainly, the grievant's anger at her supervisors' questionable decision to share this document with her co-worker is understandable. However, given the innocuous and vague nature of the text, the sharing of the document cannot reasonably be considered so egregious as to constitute a significant change in employment status or benefits. Similarly, the alleged failure to provide a job description cannot be viewed as an adverse employment action, because it had no significant detrimental effect on the grievant's employment status or benefits.

Moreover, while all grievances may proceed through the management resolution steps, to qualify for a hearing, claims of supervisory harassment and/or a "hostile work environment" must involve "hostility or aversion towards a person on the basis of race, color, national origin, age, sex, religion, disability, marital status, or pregnancy."⁷ 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 her supervisor. Such claims of supervisory conflict are not among the issues identified by the General Assembly that may qualify for a hearing.⁸

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.

Claudia T. Farr
Director

⁷ Department of Human Resource Management (DHRM) Policy 2.30, *Workplace Harassment*.

⁸ See Va. Code § 2.2-3004 (A).

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