

Issue: Qualification/claims that reassignment to a different workarea is retaliatory, unfair and without reason; Ruling Date: September 9, 2004; Ruling #2004-860; Agency: Department of Mental Health, Mental Retardation and Substance Abuse Services; Outcome: not qualified. Appealed in the Circuit Court of Amherst County; Decision: EDR ruling Affirmed; Entered on October 18, 2004.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Mental Health, Mental Retardation and
Substance Abuse Services
Ruling Number 2004-860
September 9, 2004

The grievant has requested a ruling on whether her June 18, 2004 grievance with the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS or the agency) qualifies for a hearing. The grievant claims that her reassignment to a different work area is retaliatory, unfair and without reason. For the reasons discussed below, this grievance does not qualify for hearing.

FACTS

The grievant is employed as a Direct Service Associate II with the DMHMRSAS. On May 4, 2004, the grievant claims that she called into work and asked the supervisor on duty if there was adequate staff coverage for that night. The grievant claims that the purpose of her inquiry regarding staff coverage was to ascertain whether overtime opportunities existed that evening. The supervisor allegedly stated that there was adequate coverage for that evening. The grievant later found out that there was inadequate staff coverage for that evening and questioned the supervisor regarding their earlier conversation. On May 20, 2004, the grievant claims that she and several of her co-workers questioned management regarding staff scheduling issues.

On June 5, 2004, the grievant was reassigned to a different living area. Several of her co-workers were also moved to other living areas. Agency management asserts that the staff members were reassigned because they could not get along and their constant bickering was detrimentally affecting the clients.

DISCUSSION

By statute and under the grievance procedure, management reserves the exclusive right to manage the affairs and operations of state government.¹ Thus, all claims relating to issues such as the methods, means, and personnel by which work activities are to be carried out, or to the transfer or reassignment of employees within

¹ Va. Code § 2.2-3004(B).

the agency generally do not qualify for hearing, unless the grievant presents evidence raising a sufficient question as to whether discrimination, retaliation, or discipline may have improperly influenced management's decision, or whether state policy may have been misapplied or applied unfairly.² The grievant asserts that she was reassigned to a different work area in retaliation for her questioning management regarding work schedules. Additionally, the grievant claims that her reassignment was unfair, unprofessional and void of reason.

The General Assembly has limited issues that may be qualified for a hearing to those that involve "adverse employment actions."³ 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."⁴ The threshold question then becomes whether or not the grievant has suffered an adverse employment action.

A reassignment may constitute an adverse employment action if, but only if, the reassignment results in an adverse effect *on the terms, conditions, or benefits* of one's employment.⁵ This would encompass any tangible employment action by management that has some significant detrimental effect on factors such as an employee's hiring, firing, compensation, job title, level of responsibility, or opportunity for promotion.⁶ During this Department's investigation, the grievant admitted that other than a change in her designated work area, the grievant's areas of responsibility and job duties were the same after the reassignment as before it, and that there was no change in the grievant's compensation, shift, level of responsibility, or benefits as a result of the reassignment.⁷ Moreover, the agency has provided a legitimate business reason for the reassignment of the grievant and others, namely to alleviate a tense environment created by the constant bickering and disagreement of staff members. Accordingly, this grievance does not qualify for hearing.

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

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

³ Va. Code § 2.2-3004(A). Moreover, claims of retaliation require that the grievant suffer an adverse employment action.

⁴ *Burlington Industries, Inc. v. Ellerth*, 118 S. Ct. 2257, 2268 (1998).

⁵ *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)).

⁶ *See Boone v. Goldin*, 178 F.3d. 253 (4th Cir. 1999).

⁷ The grievant does claim that there has been a minor change to her schedule, but stated during this Department's investigation that the change in schedule is not a problem for her.

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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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Director

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