

Issue: Qualification/misapplication and/or unfair application of policy, race  
discrimination, retaliation; Ruling Date: October 12, 2004; Ruling #2004-884; Agency:  
Department of Transportation; Outcome: not qualified



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

**QUALIFICATION RULING OF DIRECTOR**

In the matter of Department of Transportation  
Ruling Number 2004-884  
October 12, 2004

The grievant has requested a qualification ruling on whether his July 28, 2004 grievance with the Department of Transportation (VDOT or the agency) qualifies for hearing. The grievant alleges that the agency misapplied and/or unfairly applied policy, discriminated against him because of his race, and retaliated against him. For the reasons discussed below, this grievance does not qualify for hearing.

FACTS

The grievant is employed by VDOT as a Property Management Agent Specialist. In this capacity, the grievant performs "valuations" on property valued at less than \$10,000. He is not allowed or required to perform formal real estate appraisals. The grievant is not a licensed appraiser, and such licensure is not required to perform valuations.

On July 1, 2004, the grievant requested permission to take two real estate appraisal courses. On July 23, 2004, the agency denied the grievant's request, explaining that his current position did not require him to be a real estate appraiser and that the agency was unwilling to pay for training that was unnecessary to the grievant's job or personal development.

On July 28, 2004, the grievant initiated the present grievance. The grievant alleges that the agency's refusal of his training request constitutes "racial discrimination, unfair treatment, harassment and retaliation."

DISCUSSION

By statute and under the grievance procedure, management reserves the exclusive right to manage the affairs and operations of state government.<sup>1</sup> Therefore, claims relating to issues such as the means, methods, and personnel by which work activities are to be carried out generally do not qualify for hearing, unless the grievant presents

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<sup>1</sup> Va. Code § 2.2-3004(B).

evidence raising a sufficient question as to whether discrimination or retaliation may have improperly influenced management's decision, or whether agency policy may have been misapplied or unfairly applied, resulting in an "adverse employment action."<sup>2</sup>

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."<sup>3</sup> Thus, for a grievance to qualify for a hearing, the action taken against the grievant must result in an adverse effect on the terms, conditions, or benefits of one's employment.<sup>4</sup>

In this case, the agency's denial of the grievant's request for training does not constitute an adverse employment action. There is no evidence that this action resulted in a significant detrimental effect on the terms, conditions, or benefits of the grievant's employment. To the contrary, the grievant admits that the training was not required for his current position and that he did not seek the training as a means of advancing his career.<sup>5</sup> Because the grievant has failed to show the existence of an adverse employment action, this grievance does not qualify for a 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 this 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 notifies the agency that she wishes to conclude the grievance.

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Claudia T. Farr  
Director

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Gretchen M. White

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<sup>2</sup> Va. Code § 2.2-3004(A).

<sup>3</sup> Burlington Industries, Inc. v. Ellerth, 118 S. Ct. 2257, 2268 (1998).

<sup>4</sup> Von Gunten v. Maryland Department of the Environment, 243 F.3d 858, 866 (4<sup>th</sup> Cir 2001)(citing Munday v. Waste Management of North America, Inc., 126 F.3d 239, 243 (4<sup>th</sup> Cir. 1997)). *See also* EDR Ruling 2004-596, 2004-597.

<sup>5</sup> Shackleford v. Deloitte & Touche, LLP, 190 F.3d 398, 406-7 (5<sup>th</sup> Cir. 1999) (finding that a denial of training did not constitute an adverse employment action, where the employee had not shown that the denial "would 'tend to affect' her employment status or benefits.")

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