

Issue: Qualification/Work Conditions/Supervisor-Employee Conflict, Violence in the Workplace; Ruling Date: November 12, 2004; Ruling #2004-890; Agency: Department of Mental Health, Mental Retardation and Substance Abuse Services; Outcome: 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 Number 2004-890
November 12, 2004

The grievant has requested a ruling on whether his July 28, 2004 grievance with the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS or the agency) qualifies for hearing. He alleges that he was subjected to physical violence by a supervisor and that the agency subsequently failed to ensure his safety by taking adequate disciplinary action against the supervisor. For the reasons discussed below, this grievance does not qualify for hearing.

FACTS

The grievant is employed with the agency as a DSA III. The grievant alleges that on July 15, 2004, he was struck in the face by a supervisor. On July 28, 2004, the grievant initiated a grievance requesting that the agency take appropriate disciplinary action against the supervisor and provide mediation between him and the supervisor.

The agency subsequently conducted an investigation of the grievant's complaint. This investigation concluded that the grievant was in fact struck by the supervisor, and that the impact was significant. At the same time, however, the investigation also concluded that the contact occurred when the supervisor was gesticulating with her fist toward the grievant's face and was unintentional. Although the investigation found that the supervisor did not intend to strike the grievant's face, the agency concluded that the supervisor's conduct was nevertheless inappropriate and took action against the supervisor under the Standards of Conduct.

The agency advised the grievant that "appropriate action" would be taken against the supervisor, but explained that because personnel actions are confidential, it was unable to inform him of the specific discipline taken. The agency also offered the grievant mediation, which he declined—although he had initially requested mediation in his grievance. In addition, the agency states that it offered to transfer the supervisor to another unit or another shift, but the grievant declined this remedy as well. The grievant denies that the agency offered to transfer the supervisor.

DISCUSSION

For an allegation of misapplication of policy or unfair application of policy to qualify for a hearing, there must be facts that show that the grievant was subjected to an adverse employment action and that raise a sufficient question as to whether the management violated a mandatory policy provision, or whether the challenged action, in its totality, was so unfair as to amount to a disregard of the intent of the applicable policy.¹ The grievant alleges that the agency has misapplied the Standards of Conduct,² by failing to take adequate and appropriate disciplinary actions against his supervisor. The grievant also charges that the agency has misapplied state and agency policies on workplace violence,³ which require the agency to provide a safe working environment for its employees, essentially by failing to take disciplinary action against the supervisor sufficient to ensure that the grievant will not be subjected to further workplace harm.

While we in no way condone the supervisor's conduct, under the facts of this case, we cannot conclude that the agency misapplied or unfairly applied either the Standards of Conduct or the applicable workplace violence policies. The agency conducted a thorough investigation of the grievant's complaints, which concluded that the supervisor did not intend to strike the grievant, and that the contact between them was accidental.⁴ Following the investigation, the agency took action consistent with the investigation results, and the grievant does not allege that he has been subjected to additional physical contact by the supervisor.

Although the grievant may be disappointed that the supervisor was not suspended or terminated, the agency was not mandated by policy to take these disciplinary actions under the circumstances present. While application of the workplace violence policies is not limited to intentional conduct, the supervisor's apparent lack of intent was properly considered by the agency in determining the appropriate level of discipline. Further, the grievant has not shown that by electing not to suspend or terminate the supervisor, the agency failed to satisfy its duty to provide a safe workplace, as there is no evidence that the actions taken against the supervisor were ineffectual in preventing subsequent harm to the grievant.

The grievant also complains that the agency failed to advise him of the specific nature of the action taken against the supervisor. While the grievant's interest in the action taken against the supervisor is understandable, the agency was not required to provide this

¹ For purposes of this analysis, we assume, without deciding, that the conduct alleged by the grievant would constitute an adverse employment action.

² DHRM Policy No. 1.60.

³ DHRM Policy No. 1.80, "Workplace Violence"; DMHMRSAS Employee Handbook (October 2002), "Violence in the Workplace."

⁴ The grievant does not challenge these findings. In the course of this Department's investigation, the grievant stated that he "could not speak" to the supervisor's intent, that he did not know why the supervisor struck him, and that he was not certain that the supervisor would have come into contact with him had he not turned his face toward her. Moreover, during the agency's investigation, the grievant appeared to concede that the supervisor would sometimes engage in horseplay.

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identifiable information to the grievant: in fact, state policy mandates that an agency may not disclose information regarding a disciplinary action without the consent of the disciplined employee.⁵ Accordingly, we find that 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 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

Gretchen M. White
EDR Consultant

⁵ DHRM Policy No. 6.05, "Personnel Records Disclosure."