

Issue: Qualification/training; Ruling Date: February 10, 2005; Ruling #2004-930;  
Agency: Virginia Commonwealth University; Outcome: not qualified



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

**QUALIFICATION RULING OF DIRECTOR**

In the matter of Virginia Commonwealth University  
Ruling Number 2004-930  
February 10, 2005

The grievant has requested a ruling on whether her October 1, 2004 grievance with Virginia Commonwealth University (VCU or the agency) qualifies for a hearing. The grievant claims that the agency is participating in “unfair management practices” by failing to timely approve her request to take classes at VCU.<sup>1</sup> Additionally, the grievant claims that management’s actions are in violation of an existing mediation agreement between her and a member of management. For the reasons discussed below, this grievance does not qualify for hearing.

**FACTS**

The grievant is employed as a Housekeeping and Apparel Service Worker II with VCU. On August 4, 2004, the grievant presented two Tuition Waiver Applications to the department head for approval.<sup>2</sup> On the bottom of the applications the grievant wrote “I will need this back ASAP so I can enroll in the class.” The grievant was not required to take the courses for her current position, but rather sought to take the classes in furtherance of a bachelor’s degree. Both classes were scheduled to begin on August 26, 2004.

The department head allegedly approved and signed the applications on August 5, 2004 and returned the forms to the grievant’s open mailbox at work. The grievant claims that she checked her mailbox on a daily basis and the Tuition Waiver Applications were not placed in her mailbox on the date alleged. As a result, on September 2, 2004, she e-mailed the department head regarding the status of her request. In response, the

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<sup>1</sup> During this Department’s investigation, the grievant was asked by the investigating EDR Consultant to clarify her “unfair management practices” claim. In response, the grievant asserted that management has engaged her in a pattern of denying her the opportunity to take classes at VCU and that they have done so in retaliation for her expressing her opinions. As such, the grievant’s “unfair management practices” claim will be read to include these issues as well.

<sup>2</sup> Through the VCU tuition waiver program, eligible VCU employees may request that VCU pay the costs of tuition and other fees for up to six credit hours per semester of undergraduate, graduate, or first professional degree courses for academic credit at VCU. An application for tuition waiver shall be presented to the department head for approval or denial. *See* VCU Educational and Training Opportunities Policy pp. 2-3.

department head advised the grievant that he had placed the forms in her box and that he had copies if she needed them or if new waivers were needed he would sign them so that she could take the requested classes. Additionally, the department head placed copies of the signed applications in the grievant's mailbox and advised the grievant that if she still desired to take the classes, late registration for classes had been extended to September 3, 2004. The grievant alleges that she subsequently attempted to register for the classes, but there were no remaining spaces available for students in the requested courses.

### DISCUSSION

By statute and under the grievance procedure, management reserves the exclusive right to manage the affairs and operations of state government.<sup>3</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 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>4</sup> In this case, the grievant claims that management's actions were unfair and retaliatory. Additionally, the grievant claims that management has engaged in a pattern of denying her the opportunity to take classes.

Assuming without deciding that the action grieved in the present case would be adverse, this grievance does not qualify for hearing because there is insufficient evidence that the improper employment action alleged (i.e., failing to timely approve the grievant's request to take classes through the Tuition Waiver program and thereby effectively denying her the opportunity to take the classes) actually occurred. Specifically, as evidenced by the department head's signature on the Tuition Waiver Applications, it appears that the courses requested were in fact approved well in advance of the first day of classes. Further, when the grievant informed the department head that she had not received an answer to her request, the department head provided copies of the signed applications and offered to sign new applications if needed. Most importantly, the department head alerted the grievant that there was still time for her to register for the classes she sought. Accordingly, because the alleged act that forms the basis of the grievance does not appear to have occurred, there are no grounds upon which to qualify the grievant's "unfair management practices" or retaliation claims. Moreover, the grievant has failed to present evidence that the agency has repeatedly denied her the opportunity to take requested courses.<sup>5</sup>

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<sup>3</sup> Va. Code § 2.2-3004(B).

<sup>4</sup> Va. Code § 2.2-3004(A). 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." *Burlington Industries, Inc. v. Ellerth*, 118 S. Ct. 2257, 2268 (1998).

<sup>5</sup> During the course of this Department's investigation, the grievant was asked to provide documentation supporting her claim that she has been repeatedly denied the opportunity to take classes at VCU. In

In addition, the grievant claims that the department head has violated their mediation agreement by allegedly failing to respond to her request within a specified time period. Such claims are not among the issues identified by the General Assembly that may qualify for a hearing.<sup>6</sup> However, this Department deems it appropriate to note that the grievant may want to seek guidance from her agency's mediation coordinator regarding alleged violations of the mediation agreement in question.

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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Jennifer S.C. Alger  
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response, the only relevant documentation supplied was an e-mail written by the grievant to management inquiring as to why she had not received a Professional Development Certificate Program Enrollment form back from them.

<sup>6</sup> See Va. Code § 2.2-3004 (A).