Issue: Qualification/Work Conditions/supervisor-employee conflict; Ruling Date: April 21, 2006; Ruling #2006-1225; Agency: Department of Corrections; Outcome: not qualified.

COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Corrections
Ruling Nos. 2006-1225
April 21, 2006

The grievant has requested a ruling on whether her October 11, 2005 grievance with the Department of Corrections (DOC or the agency) qualifies for a hearing. The grievant claims that the agency has subjected her to a hostile work environment. For the reasons set forth below, this grievance does not qualify for hearing.

FACTS

The grievant is employed with DOC as a Food Service Manager A. On October 11, 2005, she initiated a grievance alleging that her supervisor has created a hostile work environment. In particular, she asserts that she has been humiliated by her supervisor's offensive behavior, rude tones, and yelling, to the point where his behavior has affected her work performance. After the parties failed to resolve the grievance during the management resolution steps, the grievant requested qualification of her grievance for hearing. The agency head denied the grievant's request, and she has appealed to this Department.

DISCUSSION

By statute and under the grievance procedure, management is reserved the exclusive right to manage the affairs and operations of state government.[1] 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.[2] Further, the General Assembly has limited issues

[1] *See* Va. Code § 2.2-3004(B).
[2] Va. Code § 2.2-3004(A) and (C); *Grievance Procedure Manual* § 4.1(c).

that may qualify 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]

In this case, the grievant alleges that her supervisor harassed her and created a hostile work environment. In addition, her grievance, fairly read, asserts that the agency has misapplied and/or unfairly applied Department of Human Resource Management (DHRM) Policy 1.80, "Workplace Violence." Each of these claims will be addressed below.

Hostile Work Environment

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."[5] 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.[6]

Workplace Violence

Although the grievant does not expressly allege that the agency has misapplied and/or unfairly applied DHRM Policy 1.80, "Workplace Violence," her grievance may be fairly read to include such a claim. Policy 1.80 prohibits conduct which subjects another individual to extreme emotional distress and includes, within its definition of "workplace violence," shouting and "an intimidating presence."[7] Recently, during the course of a ruling investigation, this Department requested informal guidance from DHRM regarding the applicability of the Workplace Violence policy to claims of supervisor-subordinate conflict. DHRM subsequently advised this Department that shouting and threats of job loss by a supervisor may constitute a violation of Policy 1.80, where the employee subjectively experiences the supervisor's conduct as threatening or intimidating.

However, this Department has repeatedly held that in order for a claim of misapplication and/or unfair application of policy to qualify for a grievance hearing, the

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[3] Va. Code § 2.2-3004(A).
[4] Burlington Industries, Inc. v. Ellerth, 118 S. Ct. 2257, 2268 (1998).
[5] DHRM Policy 2.30, "Workplace Harassment" (effective 5/1/02).
[6] *See* Va. Code § 2.2-3004 (A).
[7] DHRM Policy No. 1.80, "Workplace Violence" (effective 5/1/02).

grievant must demonstrate, as a threshold matter, that the alleged agency conduct resulted in an adverse employment action. Here, the grievant has failed to make this showing, as she has not shown that she experienced a significant change in employment status, such as termination, non-promotion, reassignment with significantly different responsibilities, or a significant change in benefits, as a result of the grieved conduct.[8] Accordingly, we conclude that the grievance does not qualify for hearing.

We note, however, that although the grievances do not qualify for a hearing, mediation or group facilitation may be a viable option for the parties to pursue. EDR's mediation program is a voluntary and confidential process in which one or more mediators, neutrals from outside the grievant's agency, help the parties in conflict to identify specific areas of conflict and work out possible solutions that are acceptable to each of the parties. Mediation and/or facilitation have the potential to effect positive, long-term changes of great benefit to the parties and work unit involved. For more information on these services, the parties should call 888-232-3842 (toll free) or 804-786-7994.

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 notifies the agency that she wishes to conclude her grievance.

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Claudia T. Farr
Director

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William G. Anderson, Jr.
EDR Consultant, Sr.

[8] *See* Munday v. Waste Management of North America, Inc., 126 F.3d 239, 243 (4th Cir. 1997) (finding that a supervisor's yelling at an employee and directing other employees to ignore and spy on her did not constitute an adverse employment action); Webb v. Cardiothoracic Surgery Associates of North Texas, P.A., 139 F.3d 532, 539 (5th Cir. 1998) (shouting at employee and throwing magazine at employee's feet did not constitute a tangible job detriment); *see also* Von Gunten v. Maryland Dept. of the Environment, 243 F.3d 858, 866 (4th Cir. 2001).