

Issue: Qualification/grievant alleges management misapplied agency procedures; Ruling Date: May 25, 2006; Ruling #2006-1340; Agency: Department of Forestry; Outcome: not qualified



Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Forestry
Ruling Number 2006-1340
May 25, 2006

The grievant has requested a ruling on whether his December 8, 2005 grievance¹ with the Department of Forestry (DOF or the agency) qualifies for hearing. He alleges that management misapplied agency procedures. For the reasons discussed below, this grievance does not qualify for hearing.

FACTS

The grievant is employed by the agency as an Area Forester. According to the agency, the grievant submitted to the agency's fiscal office a Form 22, which indicated that a customer should be billed for 30 acres of prescribed burning. However, due to wet conditions, only 21 acres were actually burned. When the customer received the bill in September 2005, he contacted the grievant regarding the discrepancy. The grievant apparently advised the customer to correct the bill with a note of explanation and then send payment to the agency's Central Office.

On October 17, 2005, Ms. H, an employee in the fiscal office, asked the grievant to submit a revised Form 22 indicating the correct number of acres. The grievant advised Ms. H that she should complete the corrected form. The grievant's supervisor, Mr. P, subsequently informed the grievant by e-mail that he was required to submit the corrected paperwork himself. The grievant responded to his supervisor that he would "not tolerate being treated in this manner" and expected "better support" and "better cooperation," and he notified the Regional Forester of the dispute.

The grievant and his supervisor met to discuss the issue on November 30, 2005. The grievant states that during that meeting, he repeatedly explained that Ms. H's request "was inefficient and more costly to the DOF than having her to simply fill out a corrected Form 22 herself." The grievant asserts that despite his protests, his supervisor continued to insist that the grievant should have completed the form himself.²

¹ Although the grievant signed and dated the Grievance Form A on December 2, 2005, he apparently did not submit it to the first step respondent until December 8, 2005.

² The grievant states that during the November 30th meeting, his supervisor insisted that he complete a Form 22 at the meeting. The grievant asserts that he did not have the information needed to complete the form at the meeting. It appears that ultimately Mr. P completed the form himself and merely had the grievant initial it.

On December 8, 2005, the grievant initiated a grievance challenging Mr. P's alleged "misapplication of the procedure to submit a corrected Form 22 to Fiscal." After the parties failed to resolve the grievance in the management resolution steps, the grievant asked the agency head to qualify the grievance for hearing. The agency head denied the grievant's request, and he 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.³ 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.⁴

Further, the General Assembly has limited issues that may qualify for a hearing to those that involve "adverse employment actions."⁵ 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."⁶

Here, the grievant alleges that his supervisor misapplied and/or unfairly applied policy by not following the procedure for submitting a corrected Form 22. He asserts that his supervisor is demanding "that an inefficient, time consuming procedure be used instead of utilizing an alternative, more efficient method already in place."

A misapplication of policy may constitute an adverse employment action only if the misapplication results in a significant change in employment status. In this case, Mr. P's alleged misapplication of procedure with respect to the Form 22 did not constitute an adverse employment action, as the alleged misapplication did not result in a significant adverse effect on the terms, conditions, or benefits of the grievant's employment. We note that the agency states, and the grievant apparently does not refute, that he was not disciplined in conjunction with his failure to complete the corrected Form 22. Moreover, while the grievant asserts that he does "not enjoy the benefit of being supported by my supervisors as [he] pursue[s] improvements" in the agency, this alleged lack of support does not constitute an adverse employment action.⁷ Accordingly, because the grievant has failed to satisfy this threshold requirement, we conclude that his December 8, 2005 grievance does not qualify for hearing.

APPEAL RIGHTS AND OTHER INFORMATION

³ See Va. Code § 2.2-3004 (B).

⁴ Va. Code § 2.2-3004 (A) and (C); *Grievance Procedure Manual* § 4.1 (c).

⁵ Va. Code § 2.2-3004 (A).

⁶ *Burlington Industries, Inc. v. Ellerth*, 118 S. Ct. 2257, 2268 (1998).

⁷ See EDR Ruling Nos. 2006-1248, 1249, 1278.

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.

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