

Issue: Qualification: Miscellaneous/Other – personal property; Ruling Date: June 20, 2007; Ruling #2007-1696; 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 Number 2007-1696  
June 20, 2007

The grievant has requested a ruling on whether his March 20, 2007 grievance with the Department of Corrections (DOC or the agency) qualifies for a hearing. The grievant challenges an agency shake-down of his office and the handling and ultimate loss of an item of his personal property that was confiscated during that shake-down. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

The grievant is employed as a case management counselor with DOC. On the morning of March 6, 2007, Lt. L allegedly entered the grievant's office and inquired about an Indian Peace Pipe that the grievant had in his office window.<sup>1</sup> According to the grievant, Lt. L told him that the item should not be in the institution and as such, stated that she was taking the pipe to the front lobby and that he could pick it up as he left work that day.<sup>2</sup>

Later that same day, at the direction of management, two correctional officers conducted a shake-down of the grievant's office. The grievant was told to remain present during the shake-down and the grievant asserts that the shake-down was done in a professional manner. However, the grievant "resents" the manner in which the shake-down was ordered and feels that the shake-down showed a "total professional disregard for [the grievant] personally and diminished the professional regard that one [sic] supposed to have for your position."

When the grievant left work that day, he claims that he asked the front lobby officer about his pipe, but was told that the item was not there. On March 8, 2007, the grievant allegedly asked Lt. L about the whereabouts of his pipe and she stated that she

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<sup>1</sup> According to the grievant, the pipe was purchased at a craft show in 1989 and although it had significant personal value to him, it was not a collectors item.

<sup>2</sup> Lt. L apparently disputes that she told the grievant she would leave the pipe in the front lobby for him to pick up upon exiting.

had given it to Major H. Major H claims that he accidentally broke the pipe by knocking it off the front entry foyer table onto the floor. According to the grievant, after breaking the pipe, Major H gave it to Mr. W. On March 8, 2007, Mr. W allegedly took the pipe to the front entry lobby for the grievant to pick up. The pipe has not yet been located.

### DISCUSSION

The grievance procedure generally limits grievances that qualify for a hearing to those that involve “adverse employment actions.”<sup>3</sup> Thus, typically, the threshold question is whether or not the grievant has suffered an adverse employment action.<sup>4</sup> An adverse employment action is defined as a “tangible employment action constitut[ing] 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>5</sup> Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one’s employment.<sup>6</sup>

Although the apparent improper handling and ultimate loss of the grievant’s personal property is unfortunate, the agency’s actions in this case do not appear to have had an adverse effect on the terms, conditions, or benefits of the grievant’s employment and thus, do not rise to the level of an adverse employment action. Accordingly, 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 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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Claudia T. Farr  
Director

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<sup>3</sup> See *Grievance Procedure Manual* § 4.1(b).

<sup>4</sup> While evidence suggesting that the grievant suffered an “adverse employment action” is generally required in order for a grievance to advance to hearing, certain grievances may proceed to hearing absent evidence of an “adverse employment action.” For example, consistent with recent developments in Title VII law, this Department substitutes a lessened “materially adverse” standard for the “adverse employment action” standard in retaliation grievances. See EDR Ruling No. 2007-1538.

<sup>5</sup> *Burlington Industries, Inc. v. Ellerth*, 118 S. Ct. 2257, 2268 (1998).

<sup>6</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)).