

Issue: Qualification – Work Conditions (hostile work environment); Ruling Date: April 16, 2008; Ruling #2008-1841; Agency: Department of Social Services; Outcome: Not Qualified.



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

**QUALIFICATION RULING OF DIRECTOR**

In the matter of Department of Social Services  
Ruling No. 2008-1841  
April 16, 2008

The grievant has requested a ruling on whether her July 19, 2007 grievance with the Department of Social Services (agency) qualifies for a hearing. The grievant claims that she has been the victim of a hostile work environment. For the following reasons, this grievance does not qualify for hearing.

FACTS

The grievant is employed as a Program Officer. She claims that she has been subjected to a number of hostile acts by an agency executive director. For instance, the grievant asserts that the agency executive director has: (1) commented on stacks of work on the grievant's desk; (2) refused to use handicap parking spaces when traveling with the grievant that would have benefited the grievant; (3) forced the grievant to share her work cubicle; (4) criticized the grievant for bringing her grandchildren to work to assist with preparation of conference bags; and (5) spoken disparagingly of telecommuting.<sup>1</sup>

On July 19, 2007, the grievant initiated a grievance in which she challenged the above cited actions and other concerns regarding her supervisor. As relief, the grievant has requested that the agency executive director receive counseling and training in the areas of sensitivity, diversity, management, and leadership. In addition, the grievant seeks to telecommute three days per week and requests a 10% increase in pay.

DISCUSSION

By statute and under the grievance procedure, management is reserved the exclusive right to manage the affairs and operations of state government.<sup>2</sup> 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

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<sup>1</sup> This is a non-exhaustive sampling of the grievant's concerns with her supervisor.

<sup>2</sup> See Va. Code § 2.2-3004(B).

whether state policy may have been misapplied or unfairly applied.<sup>3</sup> In this case, the grievant alleges that an agency executive director has harassed her creating a hostile work environment.

#### *Harassment/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, sex, color, national origin, religion, sexual orientation, age, veteran status, political affiliation, or disability.”<sup>4</sup> Here, the grievant has not alleged that the agency executive director’s actions were based on any of these factors.<sup>5</sup> As such, her claim of harassment resulting in a hostile work environment does not qualify for hearing.

We note, however, that although this grievance does not qualify for a hearing, mediation 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 has the potential to effect positive, long-term changes of great benefit to the parties and work unit involved. For more information on this Department’s Workplace Mediation program, 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 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(c).

<sup>4</sup> DHRM Policy 2.30, “Workplace Harassment.”

<sup>5</sup> Nor does the grievant assert that she has been harassed as a result of having engaging in any sort of protected activity. See Va. Code § 3004(A) “A grievance qualifying for a hearing shall involve a complaint or dispute by an employee relating to the following adverse employment actions in which the employee is personally involved, including but not limited to . . . (v) acts of retaliation as the result of the use of or participation in the grievance procedure or because the employee has complied with any law of the United States or of the Commonwealth, has reported any violation of such law to a governmental authority, has sought any change in law before the Congress of the United States or the General Assembly, or has reported an incidence of fraud, abuse, or gross mismanagement; and (vi) retaliation for exercising any right otherwise protected by law.”