

Issue: Qualification – Work Conditions (Co-Worker and Supervisor Conflict);  
Ruling Date: November 17, 2009; Ruling #2010-2421; Agency: College of  
William and Mary; Outcome: Not Qualified.



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

**QUALIFICATION RULING OF DIRECTOR**

In the matter of The College of William and Mary  
Ruling No. 2010-2421  
November 17, 2009

The grievant has requested a ruling on whether her June 11, 2009 grievance with the College of William and Mary (the College or the agency) qualifies for a hearing. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

The grievant is employed as a housekeeper with the College. On June 11, 2009, the grievant initiated a grievance to challenge the alleged workplace harassment by a co-worker (Co-worker P) and management she has endured. The grievant cites to a number of examples of alleged harassment in support of her claim, including being accused of trying to “run down” Co-worker P with her car and being “verbally abused” by Co-worker P. In addition the grievant alleges that Co-worker P listens to the grievant’s conversations in the break room and in other common areas where they work and that Co-worker P demeans the grievant by referring to her as “she” instead of addressing the grievant by name during meetings. The grievant also alleges that agency management has engaged in workplace harassment by failing to remedy the harassing behavior.

DISCUSSION

By statute and under the grievance procedure, management is reserved the exclusive right to manage the affairs and operations of state government.<sup>1</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 whether state policy may have been misapplied or unfairly applied.<sup>2</sup> In this case, the grievant alleges that she has been harassed by a co-worker and that the College has misapplied and/or unfairly applied policy failing to take appropriate action to eliminate the harassment.

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<sup>1</sup> See Va. Code § 2.2-3004(B).

<sup>2</sup> Va. Code § 2.2-3004 (A) and (C); *Grievance Procedure Manual* § 4.1 (c).

While grievable through the management resolution steps, claims of workplace harassment qualify for a hearing only if an employee presents sufficient evidence showing that the challenged actions are based on race, sex, color, national origin, religion, sexual orientation, age, veteran status, political affiliation, or disability.<sup>3</sup> Here, the grievant has not sufficiently alleged that Co-worker P's or management's actions were based on any of these factors<sup>4</sup> nor has this Department found evidence of such.<sup>5</sup> Rather, the facts cited in support of the grievant's claim can best be summarized as describing general work-related conflict between the grievant, management and Co-worker P. Claims of general work-related conflict such as those at issue in this case are not among the issues identified by the General Assembly that may qualify for a hearing.<sup>6</sup>

In addition, the grievant asserts that management has violated the workplace harassment policy by allowing the workplace harassment to continue and/or failing to take appropriate action. Even if this Department were to assume that the workplace harassment policy would apply in this case and that the grievant has suffered an adverse employment action,<sup>7</sup> the grievant has failed to present sufficient evidence that the College has misapplied and/or unfairly applied the workplace harassment policy in this case. Under the workplace harassment policy, management is responsible for taking "immediate action to eliminate any hostile work environment where there has been a complaint of workplace harassment."<sup>8</sup> In other words, the workplace harassment policy

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<sup>3</sup> *Grievance Procedure Manual* § 4.1(b)(2); see also DHRM Policy 2.30 Workplace Harassment.

<sup>4</sup> In her grievance, the grievant asserts that she has been "constantly harassed" by a co-worker. However, the grievant further states that she is "not sure if [her co-worker] has a problem with [the grievant] because of [the grievant's] race, [ ] age, because [the grievant] is a women [sic] or if it's just her [co-worker's] pattern of behavior towards anyone she has to work closely with." The grievant also states that her co-worker has similarly harassed at least two other former College employees. Moreover, with regard to management's alleged hostile behavior toward the grievant, the grievant states that while she feels "singled out," "all housekeepers are disrespected and treated badly by the housekeeping management" and that "favoritism" seems to be the primary reason for employees being treated more satisfactorily than other housekeeping employees.

<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) In this case, the grievant states that she is "working in a hostile work environment that functions on fear and retaliation," however the grievant does not specifically state whether she herself has been the victim of such alleged retaliation and/or whether she engaged in protected activity. This Department attempted to contact the grievant on several occasions for further information regarding her retaliation claim, however, such attempts were unsuccessful.

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

<sup>7</sup> The General Assembly has limited issues that may qualify for a hearing to those that involve "adverse employment actions." 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). A misapplication of policy may constitute an adverse employment action if, but only if, the misapplication results in an adverse effect *on the terms, conditions, or benefits* of one's employment. See, e.g., *Holland v. Washington Homes, Inc.*, 487 F.3d 208, 219 (4<sup>th</sup> Cir. 2007).

<sup>8</sup> DHRM Policy 2.30

is generally intended to protect the party that has made a complaint of workplace harassment from further harassment.

In this case, the agency appears to have taken steps to stop any alleged harassment from continuing further. In particular, in response to the grievance, the second step respondent has granted the following relief: no later than December 15, 2009, housekeeping staff will be trained in conflict resolution and communications; anger management training will be offered to those employees whose individual performance is deemed by management to warrant such training; and supervisors will be provided guidance and training on how to “appropriately counsel all staff in proper decorum and behavior in the work place” and on how to counsel employees and document such counseling. In addition, in an effort to address the apparent conflict between the grievant and Co-worker P, management has separated the two employees so that they no longer work together.

Based on the foregoing, this Department concludes that the grievant has failed to present sufficient evidence that she has been subjected to workplace harassment under DHRM Policy 2.30 and/or that management has violated the workplace harassment policy. Accordingly, this grievance does not qualify for a hearing.

#### *Mediation*

Although this grievance does not qualify for a hearing, we note that 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 this Department’s qualification determination to the circuit court, the grievant should notify the human resources office, in writing, within five workdays of receipt of this ruling and file a notice of appeal with the circuit court pursuant to Va. Code § 2.2-3004(E). 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 he wishes to conclude the grievance.

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Claudia Farr  
Director