

Issue: Qualification – Work Conditions (Other); Ruling Date: May 7, 2010; Ruling #2010-2637; Agency: Department of Corrections; Outcome: Not Qualified.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of the Department of Corrections
Ruling Number 2010-2637
May 7, 2010

The grievant has requested a ruling on whether her February 9, 2010 grievance with the Department of Corrections (the agency) qualifies for a hearing. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

On February 8, 2010, the grievant was assigned to work outside in the yard at the agency's facility on a cold day. She sought to wear coveralls that were available, but she claimed they were dirty. She e-mailed the Governor about the situation. The following day, February 9, 2010, the grievant was called to the warden's office for a meeting. The discussion concerned the state of the available coveralls. The grievant states that the warden called her a liar.

The grievant submitted a grievance, dated February 9, 2010, to raise issues about the cleanliness of the coveralls. Her grievance also discusses the February 9, 2010 meeting and interactions with the warden, including allegedly being called a liar. As relief in her grievance, she sought to be "treated with respect and stay warm on the yard." As a result of her grievance, the warden states that procedures have been put in place to wash coveralls on a regular basis.

DISCUSSION

Although state employees with access to the grievance procedure may generally grieve anything related to their employment, only certain grievances qualify for a hearing.¹ Additionally, by statute and under the grievance procedure, management is reserved the exclusive right to manage the affairs and operations of state government.² 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.

¹ See *Grievance Procedure Manual* § 4.1 (a) and (b).

² Va. Code § 2.2-3004(B).

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve “adverse employment actions.”³ Thus, typically, the threshold question is whether the grievant has suffered an adverse employment action.⁴ An adverse employment action is defined as a “tangible employment act 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.”⁵ Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one’s employment.⁶

This Department has reviewed the materials submitted and finds that none of the grievant’s allegations amount to an adverse employment action. Although the grievant has identified various issues about her meeting with the warden on February 9, 2010, it does not appear that the agency has taken any action that has had a significant detrimental effect on the terms, conditions, or benefits of the grievant’s employment. Further, the agency appears to have allowed employees to handle the elements when working outside in a reasonable manner. Coveralls are available and will be washed on a regular basis according to the warden. In addition, management has been flexible in allowing employees to wear personal undergarments and/or other apparel to ensure they are warm and dry. Consequently, there is no basis for this grievance to 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 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 wishes to conclude the grievance and notifies the agency of that desire.

Claudia T. Farr
Director

³ See *Grievance Procedure Manual* § 4.1(b).

⁴ 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.

⁵ *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

⁶ *Holland v. Washington Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007).