

Issues: Compliance and Qualification – Grievance Procedure (Other Issue), Work Conditions (Co-Worker Conflict), and Retaliation (Grievance Activity); Ruling Date: October 18, 2010; Ruling #2011-2796; Agency: Department of Veterans Services; Outcome: Grievant in Compliance, Qualified for Hearing.



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

**QUALIFICATION AND COMPLIANCE RULING OF DIRECTOR**

In the matter of Department of Veterans Services  
Ruling Number 2011-2796  
October 18, 2010

This ruling addresses the partial qualification of the grievant's May 21, 2010 grievance by the Department of Veterans Services (the agency). In addition to challenging a Group I Written Notice, her grievance raised other issues regarding retaliation, harassment, and a Notice of Improvement Needed. The agency head has only qualified issues regarding the Group I Written Notice for hearing. The grievant has not appealed this partial qualification. However, to clarify the issues qualified for hearing along with the Group I Written Notice, this brief ruling is necessary.

In this case, the grievant's claims of harassment and retaliation could be raised at hearing, at least in part, as *theories* with which to challenge the Written Notice. As this Department has previously ruled, the "claims" or "issues" raised by a grievance are the management actions being challenged.<sup>1</sup> In this grievance, the management action already qualified for a hearing is the Written Notice. The grievant's theories against the Written Notice cannot be severed from her challenge to the disciplinary action.<sup>2</sup> Therefore, to the extent the grievant's claims of harassment and retaliation are theories with which she seeks to demonstrate that the Written Notice was improper, those arguments can be raised at hearing. These theories are in essence automatically qualified for hearing along with the challenge to the Written Notice.

However, because the grievant did not challenge the partial qualification, no additional management action has been qualified for a hearing. As such, the grievant's challenge to the Notice of Improvement Needed has not been qualified for hearing. In addition, to the extent the grievant seeks to use her theories of harassment and retaliation to challenge any other management actions beyond the Written Notice, those other management actions are similarly not qualified for hearing.

This ruling in no way determines that the grievant's allegations of harassment and/or retaliation as to the Written Notice have any merit, only that those theories may be raised at hearing with respect to the Written Notice. In addition, this ruling does not address what may be

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<sup>1</sup> See, e.g., EDR Ruling Nos. 2007-1561 & 2007-1587.

<sup>2</sup> See EDR Ruling Nos. 2009-2127, 2009-2129, 2009-2130.

offered into evidence at hearing. For instance, evidence regarding past occurrences that is relevant to the grievant's claims of harassment and/or retaliation as to the Written Notice could possibly still be offered by either or both parties as background evidence in support of their respective positions regarding the Written Notice.

This Department's rulings on matters of compliance are final and nonappealable.<sup>3</sup> A hearing officer will be appointed in a forthcoming letter.

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Claudia T. Farr  
Director

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<sup>3</sup> See Va. Code §§ 2.2-1001(5), 2.2-3003(G).