

Issue: Qualification – Management Actions (Assignment of Duties); Ruling Date: October 19, 2011; Ruling No. 2012-3135; 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 2012-3135
October 19, 2011

The grievant has requested a ruling on whether his March 13, 2011 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

In his March 13, 2011 grievance, the grievant challenges his removal from a K-9 Officer position. The removal of these duties arose out an incident on March 2, 2011 when it was alleged that the grievant had consumed alcohol with dinner on a break prior to returning to work. The agency views the removal of these duties as a changed post assignment.

DISCUSSION

The grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.¹ Thus, claims relating to issues such as the methods, means and personnel by which work activities are to be carried out and the reassignment or transfer of employees within the agency 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 improperly influenced management's decision, or whether policy may have been misapplied or unfairly applied.²

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

¹ See Va. Code § 2.2-3004(B).

² Va. Code § 2.2-3004(A); *Grievance Procedure Manual* § 4.1(c).

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.

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.”⁵ Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one’s employment.⁶

A transfer or reassignment may constitute an adverse employment action if a grievant can show that the transfer/reassignment had some significant detrimental effect on the terms, conditions, or benefits of his employment.⁷ A reassignment or transfer with significantly different responsibilities, or one providing reduced opportunities for promotion can constitute an adverse employment action, depending on all the facts and circumstances.⁸

Even though the grievant’s removal from the K-9 position represents a change in duties, the agency’s actions do not appear to have had a significant detrimental effect on the grievant or caused him a significant change in employment status such as a decrease in salary or benefits or promotional opportunities, and no evidence has been submitted to the contrary. Therefore, this post assignment change is not considered an adverse employment action.⁹ Accordingly, the grievance cannot 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

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).

⁷ See *id.*

⁸ See James v. Booz-Allen & Hamilton, Inc., 368 F.3d 371 (4th Cir. 2004); Boone v. Goldin, 178 F.3d 253 (4th Cir. 1999); see also Edmonson v. Potter, 118 F. App’x 726 (4th Cir. 2004) (unpublished opinion).

⁹ See EDR Ruling No. 2006-1224.