

Issue: Qualification – Performance Evaluation (arbitrary/capricious); Ruling Date: March 12, 2012; Ruling No. 2012-3292; Agency: University of Virginia Health System; Outcome: Not Qualified.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of the University of Virginia Health System
Ruling Number 2012-3292
March 12, 2012

The grievant has requested a ruling on whether her December 29, 2011 grievance with the University of Virginia Health System (the agency) qualifies for hearing. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

The grievant initiated this grievance on or about December 29, 2011 to challenge her annual performance evaluation because she received an overall “below expectations” rating. This rating was reportedly based on such issues as 1) difficulties with the grievant’s “flexing up” to work additional hours, 2) failing to follow certain protocols and procedures, for instance, regarding the proper labeling of samples taken from patients, and 3) working as a team with co-workers and management, such as, for example, related to when work is begun and continued. During the performance cycle, the grievant received six written counseling memoranda regarding such issues. As a result, the grievant received a slightly “below expectations” rating overall on her performance evaluation. The grievant disputes the agency’s assessments¹ and now seeks qualification of her grievance for a hearing.

DISCUSSION

The grievance statutes and procedure reserve to management the exclusive right to establish performance expectations and to rate employee performance against those expectations.² Accordingly, for this grievance to qualify for a hearing, there must be facts raising a sufficient question as to whether the grievant’s performance rating, or an element thereof, was “arbitrary or capricious.”³

¹ To the extent the grievant has asserted that her performance evaluation was the result of improper retaliation, nothing has been presented that would support such a claim. For instance, the grievant has not identified any protected activity that she engaged in from which an alleged retaliatory intent might arise. Consequently, her grievance would not qualify on that basis.

² See Va. Code § 2.2-3004(B) (reserving to management the exclusive right to manage the affairs and operations of state government).

³ Va. Code § 2.2-3004(A); *Grievance Procedure Manual* § 4.1(b).

“Arbitrary or capricious” means that management determined the rating without regard to the facts, by pure will or whim. An arbitrary or capricious performance evaluation is one that no reasonable person could make after considering all available evidence. If an evaluation is fairly debatable (meaning that reasonable persons could draw different conclusions), it is not arbitrary or capricious. Thus, mere disagreement with the evaluation or with the reasons assigned for the ratings is insufficient to qualify an arbitrary or capricious performance evaluation claim for a hearing when there is adequate documentation in the record to support the conclusion that the evaluation had a reasoned basis related to established expectations. However, if the grievance raises a sufficient question as to whether a performance evaluation resulted merely from personal animosity or some other improper motive--rather than a reasonable basis--a further exploration of the facts by a hearing officer may be warranted.

The grievant has not raised a sufficient question as to whether the agency was arbitrary or capricious in rating the grievant’s performance. The grievant’s evidence is largely explanatory, showing disagreement with management’s assessment, but not disputing that most of the events occurred.⁴ Further, the grievant has admitted to some of the conduct described in her performance review, yet disputing the significance of her behavior. While the grievant may articulate reasonable points of dispute, this Department concludes that there is insufficient evidence to support an assertion that this performance evaluation was without a basis in fact or otherwise arbitrary or capricious. This Department has reviewed nothing in the grievance paperwork that would support a conclusion that the evaluation resulted from anything other than management’s reasoned review of the grievant’s performance in relation to established performance expectations.

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

⁴ The only performance issue that the grievant appears to directly dispute as having not occurred is in relation to her access of e-mail during her workday. However, the grievant does admit to some checking of e-mail during her shift. Even if we discount the agency’s rating of the grievant on this factor, the analysis of this ruling does not change.