

Issue: Qualification – Miscellaneous (other issue); Ruling Date: October 3, 2012;
Ruling No. 2013-3434; Agency: Department of Corrections; Outcome: Not Qualified.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Employment Dispute Resolution

QUALIFICATION RULING

In the matter of the Department of Corrections
Ruling Number 2013-3434
October 3, 2012

The grievant has requested a ruling on whether her June 14, 2012 grievance with the Department of Corrections (“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 Program Support Technician at the agency. She indicates that her duties include receiving employee leave registers from the agency’s Central Office. Her grievance alleges that, while in search of these registers one day, she looked in her supervisor’s desk drawer to check if he had already received them, as had been her practice in the past. Upon opening the supervisor’s desk drawer, the grievant states that she found a document that she believed to be about her and written by the supervisor.

The document in question appears to be a list of unfavorable characteristics, the contents of which the grievant states angered and disgusted her. The note reads as follows: “Ridiculous... Tired of Her Anger... Don’t Bite The Hand that Hired her...Yankee Bitch... Menstruating... Married a Convict – Took all Her Money... Angry in Front of Me... Talks on Phone Incessantly... Bankrupt...” The note names another person, “A’ - Probational” and ends with the statement, “There’s a Fight Coming.” The note is unsigned and does not contain grievant’s name, nor the name of her supervisor; it is disputed whether the note is actually about the grievant and whether the supervisor wrote the note.

On or about June 14, 2012, the grievant initiated this grievance, requesting as relief that her supervisor admit he wrote the note and apologize for its contents. As part of the management resolution steps, the agency asserts that it thoroughly reviewed the situation and took appropriate action to address it with the supervisor, though he continued to deny writing the note in question. The agency head declined to qualify the grievance for a hearing, and the grievant now appeals that determination to EDR.

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 to the methods, 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 improperly influenced management's decision, or whether state policy may have been misapplied or unfairly applied.³

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions."⁴ Thus, typically, the threshold question is whether the grievant has suffered an adverse employment action. An adverse employment 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 In this case, there is no evidence that the grievant has experienced any significant effects as a result of the note found in her supervisor's desk drawer that would rise to the level of an adverse employment action.

This ruling does not mean that EDR deems the alleged actions by the grievant's supervisor, if true, to be appropriate; only that this grievance does not qualify for a hearing based on the evidence presented to EDR. Notwithstanding, statements such as the ones made within the note found by the grievant could be inconsistent with the Standards of Conduct⁷ and, accordingly, agency management should take any necessary action to address this issue.

APPEAL RIGHTS AND OTHER INFORMATION

EDR's qualification rulings are final and nonappealable.⁸ The nonappealability of such rulings became effective on July 1, 2012. Because the instant grievance was initiated prior to that date, it is not EDR's role to foreclose any appeal rights that may still exist for the grievant under prior law. If the grievant wishes to attempt 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

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

² See Va. Code § 2.2-3004(B).

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

⁴ See *Grievance Procedure Manual* § 4.1(b).

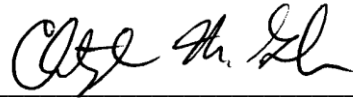
⁵ *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

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

⁷ DHRM Policy 1.60, *Standards of Conduct*.

⁸ Va. Code § 2.2-1202.1(5).

former Va. Code § 2.2-3004(E). EDR makes no representations as to whether such an appeal is proper or can be accepted by the circuit court. Such matters are for the circuit court to decide. 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.



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