

Issue: Qualification – Retaliation (Other Protected Right); Ruling Date: November 27, 2012; Ruling No. 2013-3484; Agency: Virginia Department of Fire Programs; Outcome: Qualified.



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

QUALIFICATION RULING

In the matter of Department of Fire Programs
Ruling Number 2013-3484
November 27, 2012

This ruling addresses the partial qualification of the grievant's September 13, 2012 grievance by the Department of Fire Programs (the agency). The management action challenged by this grievance is a Group I Written Notice. The agency head has qualified the challenge to the the Group I Written Notice for hearing, but stated that the grievant's claim of retaliation does not qualify for hearing. The grievant has indicated to this Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management that he wishes to appeal this partial qualification.

In this case, the grievant's claim of retaliation appears to be raised, at least in part, as a *theory* of challenge to the Written Notice. As EDR has ruled, the "claims" or "issues" raised by a grievance concern what management actions are being challenged.¹ 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 the challenge to the disciplinary action.² Therefore, to the extent the grievant's claim of retaliation is a theory why he believes the Written Notice was improper, those arguments can be raised at hearing. The theory of retaliation is qualified for hearing with the challenge to the Written Notice. However, to the extent the grievant's claim of retaliation challenges more than just the Written Notice, such claims remain not qualified for hearing.

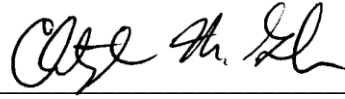
This ruling in no way determines that the grievant's allegations of retaliation as to the Written Notice have any merit, only that the matters may be raised at hearing. In addition, this ruling does not address what specific facts may be offered into evidence at hearing. For instance, past instances that are relevant to the grievant's claim of retaliation as to the Written Notice could possibly still be offered by either or both parties as background evidence. Thus, while a hearing officer will not be able to uphold or provide relief for any other past instances of retaliation, a hearing officer may consider, in his or her sole discretion, whether and to what extent the facts and circumstances surrounding the Written Notice are probative of the merits of the grievant's qualified claims and theories.³

¹ See, e.g., EDR Ruling Nos. 2007-1561 & 2007-1587; EDR Ruling No. 2007-1457; EDR Ruling No. 2007-1444.

² See, e.g., EDR Ruling No. 2011-2796; EDR Ruling Nos. 2009-2127, 2009-2129, 2009-2130.

³ See, e.g., EDR Ruling No. 2008-1984; EDR Ruling No. 2003-098 & 2003-112.

EDR's rulings on matters of compliance and qualification are final and nonappealable.⁴
A hearing officer will be appointed in a forthcoming letter.



Christopher M. Grab
Director, Office of Employment Dispute Resolution

⁴ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).