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QUALIFICATION RULING

In the matter of the Virginia Department of Military Affairs
Ruling Number 2024-5720
June 13, 2024

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether his grievance initiated on or about May 10, 2024 with the Virginia Department of Military Affairs (the “agency”) qualifies for a hearing. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

The grievant appears to have had a workplace injury in 2011. It appears that the grievant may have had to be out of work for reasons allegedly related to this injury more recently in 2024. In his grievance, filed on or about May 10, 2024, the grievant states that he had to use 600 hours of leave and is filing the grievance to seek restoration of his leave. Although the grievance provides no further details, the grievance form notes that the dates on which the grievance occurred were from January 12, 2024 to April 8, 2024, which we presume was a time period during which this leave use occurred. The grievance has proceeded through the management resolution steps and the agency head elected not to qualify the grievance for a hearing. The grievant now appeals the qualification denial 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, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.² Thus, claims relating to issues such as 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 or agency policy may have been misapplied or unfairly applied.³

¹ See *Grievance Procedure Manual* § 4.1.

² Va. Code § 2.2-3004(B).

³ *Id.* § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).

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 involves an act or omission by the employer that results in “harm” or “injury” to an “identifiable term or condition of employment.”⁵

As an initial matter, it is unclear whether the grievance process is the proper forum for the grievant to address his claims. The facts of this case appear to relate to a work-related injury and alleged later impacts of that injury. Thus, it would appear that the proper forum would be the Virginia Workers’ Compensation Commission (“VWCC” or “Commission”) who has exclusive authority over such questions.⁶ EDR encourages the grievant to address his claims in that forum.

Nevertheless, EDR observes that state policy provides that employee absences may be designated as workers’ compensation when the absence “has been determined to have resulted from an injury or occupational disease such that the employee is entitled to benefits required by the [Workers’ Compensation Act].”⁷ Furthermore, “[i]f the absence is accepted as compensable and the employee is eligible to receive indemnity benefits for the period under a Workers’ Compensation VWCC award time will be reinstated to the employee based on the amount paid under the VWCC award.”⁸ In theory, if an agency has failed to designate an employee’s absence consistent with these provisions and restore an employee’s leave properly, there may be a basis to qualify a grievance for hearing contesting such a matter. However, under these facts, there is no indication that the grievant has received an award from the Commission concerning any absence addressed in his grievance. As such, EDR is unable to find that there has been any misapplication of policy such that this grievance would qualify for a hearing.

CONCLUSION

For the reasons expressed in this ruling, the facts presented by the grievant in his May 10, 2024 grievance do not constitute a claim that qualifies for a hearing under the grievance procedure.⁹

EDR’s qualification rulings are final and nonappealable.¹⁰

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⁴ See *Grievance Procedure Manual* § 4.1(b); see Va. Code § 2.2-3004(A).

⁵ See *Muldrow v. City of St. Louis*, 144 S. Ct. 967, 974 (2024) (addressing a required element of a Title VII discrimination claim); see, e.g., *Burlington Indus. v. Ellerth*, 524 U.S. 742, 761 (1998) (defining adverse employment actions under Title VII to include “tangible” acts “such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits”).

⁶ See, e.g., Va. Code §§ 65.2-307, 65.2-700, 65.2-702; see also DHRM policy 4.57, *Virginia Sickness and Disability Program* (describing workers’ compensation benefits for state employees and the role of the Commission in approving a claim for benefits).

⁷ DHRM Policy 4.60, *Workers’ Compensation*.

⁸ DHRM Policy 4.57, *Virginia Sickness and Disability Program*, at 19.

⁹ See *Grievance Procedure Manual* § 4.1.

¹⁰ Va. Code § 2.2-1202.1(5).