



JANET L. LAWSON  
DIRECTOR

**COMMONWEALTH OF VIRGINIA**  
*Department Of Human Resource Management*  
*Office of Employment Dispute Resolution*

James Monroe Building  
101 N. 14<sup>th</sup> Street, 12<sup>th</sup> Floor  
Richmond, Virginia 23219  
Tel: (804) 225-2131  
(TTY) 711

**QUALIFICATION RULING**

In the matter of the Virginia Department of Transportation  
Ruling Number 2025-5797  
January 23, 2025

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether her grievance initiated on or about August 26, 2024 with the Virginia Department of Transportation (the “agency”) qualifies for a hearing. For the reasons discussed below, this grievance does not qualify for a hearing.

**FACTS**

The grievant alleges that her former supervisor<sup>1</sup> “triggered severe post traumatic disorder with subsequent dissociation through verbal abuse.” The grievant describes that her condition is “triggered” by bullying and intimidating behavior. She also claims that her former supervisor knew about this preexisting condition. On August 7, 2024, the grievant observed an outside consultant’s behavior in the workplace that made her uncomfortable. She spoke with her former supervisor about the consultant’s behavior and that conversation “became very intimidating and upsetting.” The grievant felt that her former supervisor “targeted” her condition through this conduct. Once the grievant felt that the conduct became “aggressively intimidating,” she left the former supervisor’s office and returned to her own office. The former supervisor went to the grievant’s office and continued the interaction from the office door.

In response to the grievant’s submission of a compliant about this incident, the agency investigated under the Civility in the Workplace policy.<sup>2</sup> The agency’s investigation did not substantiate a violation of the policy by the former supervisor. The grievant was unable to recall the portion of the interaction with the former supervisor that occurred at her office. In addition, the agency interviewed a witness who was nearby when the interaction at the grievant’s office occurred. This witness indicated that they observed nothing alarming and that, while the former supervisor appeared frustrated, he was not yelling.

---

<sup>1</sup> The grievant’s former supervisor had been selected for another position and is no longer the grievant’s supervisor but is still in the same building as the grievant multiple days per week.

<sup>2</sup> DHRM Policy 2.35, *Civility in the Workplace*.

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.<sup>3</sup> Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.<sup>4</sup> Thus, claims relating to issues such as the means, methods, 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.<sup>5</sup> For an allegation of misapplication of policy or unfair application of policy to qualify for a hearing, the available facts must raise a sufficient question as to whether management violated a mandatory policy provision, or whether the challenged action in its totality was so unfair as to amount to a disregard of the applicable policy's intent.<sup>6</sup>

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions."<sup>7</sup> Thus, typically, the threshold question is whether the grievant has suffered an adverse employment action that could be remedied by a hearing officer. 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."<sup>8</sup> Workplace harassment rises to this level if it includes conduct that is "sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment."<sup>9</sup>

The subject of the grievance is the alleged bullying and intimidating behavior (harassment), as the grievant describes it, by her former supervisor on August 7, 2024. Although DHRM Policy 2.35 prohibits workplace harassment<sup>10</sup> and bullying,<sup>11</sup> alleged violations must meet certain requirements to qualify for a hearing. Harassment, bullying, or other prohibited conduct may

---

<sup>3</sup> See *Grievance Procedure Manual* § 4.1.

<sup>4</sup> Va. Code § 2.2-3004(B).

<sup>5</sup> *Id.* § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).

<sup>6</sup> See, e.g., EDR Ruling No. 2022-5309; EDR Ruling No. 2020-4956.

<sup>7</sup> See *Grievance Procedure Manual* § 4.1(b); see Va. Code § 2.2-3004(A).

<sup>8</sup> 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").

<sup>9</sup> *Strothers v. City of Laurel*, 895 F.3d 317, 331 (4th Cir. 2018) (citing *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57 (1986)).

<sup>10</sup> Traditionally, workplace harassment claims were linked to a victim's protected status or protected activity. However, DHRM Policy 2.35 also recognizes non-discriminatory workplace harassment, defined as "[a]ny targeted or directed unwelcome verbal, written, social, or physical conduct that either denigrates or shows hostility or aversion towards a person not predicated on the person's protected class."

<sup>11</sup> DHRM Policy 2.35 defines bullying as "[d]isrespectful, intimidating, aggressive and unwanted behavior toward a person that is intended to force the person to do what one wants, or to denigrate or marginalize the targeted person." The policy specifies that bullying behavior "typically is severe or pervasive and persistent, creating a hostile work environment."

qualify for a hearing as an adverse employment action if the grievant presents evidence that raises a sufficient question whether the conduct was (1) unwelcome; (2) sufficiently severe or pervasive that it alters the conditions of employment and creates an abusive or hostile work environment;<sup>12</sup> and (3) imputable on some factual basis to the agency.<sup>13</sup> As to the second element, the grievant must show that they perceived, and that an objective reasonable person would perceive, the environment to be abusive or hostile.<sup>14</sup>

DHRM Policy 2.35 and its associated guidance make clear that agencies must not tolerate workplace conduct that is disrespectful, demeaning, disparaging, denigrating, humiliating, dishonest, insensitive, rude, unprofessional, or unwelcome. While these terms must be read together with agencies' broader authority to manage the means, methods, and personnel by which agency work is performed, management's discretion is not without limit. Policy 2.35 also places affirmative obligations on agency management to respond to credible complaints of prohibited conduct and take steps to ensure that such conduct does not continue. Specifically, "[a]gency managers and supervisors are required to: [s]top any prohibited conduct of which they are aware, whether or not a complaint has been made; [e]xpress strong disapproval of all forms of prohibited conduct; [i]ntervene when they observe any acts that may be considered prohibited conduct; [t]ake immediate action to prevent retaliation towards the reporting party or any participant in an investigation; [and t]ake immediate action to eliminate any hostile work environment when there has been a complaint of workplace harassment . . . ."<sup>15</sup> When an agency fails to meet these obligations, such failure may constitute a misapplication or unfair application of Policy 2.35 such that the harassing or bullying behavior is imputable to the agency.

Finally, qualification may not be appropriate even if a grievance challenges a management action that might ordinarily qualify for a hearing. For example, an issue may have become moot during the management resolution steps, either because the agency granted the specific relief requested by the grievant or an interim event prevents a hearing officer from being able to grant any meaningful relief. Additionally, qualification may be inappropriate when the hearing officer does not have the authority to grant the relief requested by the grievant and no other effectual relief is available.<sup>16</sup>

After a thorough review of the record, EDR is unable to find that the former supervisor's behavior on August 7 was so severe or pervasive that the grievant's claims would qualify for a

---

<sup>12</sup> The grievant must show that he or she perceived, and an objective reasonable person would perceive, the environment to be abusive or hostile. *Freeman v. Dal-Tile Corp.*, 750 F.3d 413, 421 (4th Cir. 2014) (citing *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21-23 (1993)). "[W]hether an environment is 'hostile' or 'abusive' can be determined only by looking at all the circumstances. These may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Harris*, 510 U.S. at 23; *see, e.g.*, *Parker v. Reema Consulting Servs.*, 915 F.3d 297, 304-05 (4th Cir. 2019) (finding that a false rumor that an employee was promoted for sleeping with a manager altered the conditions of her employment because the employee was blamed for the rumor and told she could not advance in the company because of it); *Strothers*, 895 F.3d at 331-32 (holding that a hostile work environment could exist where a supervisor overruled the employee's bargained-for work hours, humiliated the employee for purportedly violating the dress code, required her to report every use of the restroom, and negatively evaluated her based on perceived slights).

<sup>13</sup> *See Gilliam v. S.C. Dep't of Juvenile Justice*, 474 F.3d 134, 142 (4th Cir. 2007).

<sup>14</sup> *Freeman*, 750 F.3d at 421; *see* DHRM Policy Guide – Civility in the Workplace ("A 'reasonable person' standard is applied when assessing if behaviors should be considered offensive or inappropriate.").

<sup>15</sup> DHRM Policy 2.35, *Civility in the Workplace*.

<sup>16</sup> *See, e.g.*, EDR Ruling No. 2021-5261; EDR Ruling No. 2017-4509; EDR Ruling No. 2017-4477.

hearing. Additionally, the agency has demonstrated that it took appropriate action to investigate the grievant's claims, but the complaint was not substantiated. Accordingly, EDR cannot find that the agency has misapplied or unfairly applied policy. Furthermore, given that the grievant and the former supervisor are no longer working together, it is unclear what relief a hearing officer could order in such a situation if the grievance were to proceed to hearing. If future incidents were to occur involving the former supervisor, or others, nothing in this ruling prevents the grievant from pursuing another grievance or other avenues, such as an internal complaint with the agency's human resources department or an Equal Employment Opportunity Commission (EEOC) complaint. For the foregoing reasons, EDR is unable to qualify this grievance for a hearing.

EDR has also been made aware that the grievant has recently submitted a new request for accommodations under the Americans with Disabilities Act. It is our understanding that given the types of situations that may trigger or exacerbate her condition (though EDR has not been provided the full content of the request or any supporting documentation), the grievant seeks to increase the time that she teleworks. The grievant does not appear to seek to avoid those duties that would necessarily require in-person work, such as site visits. However, she is attempting to avoid further triggers to her condition by utilizing telework. While this matter is not a subject of the grievance at issue in this ruling, EDR would take this opportunity to recommend that this accommodation request be seriously evaluated and considered by the agency as it may serve as a simple and effective way to mitigate potential occurrences for the long-term.

### CONCLUSION

For the reasons expressed in this ruling, the facts presented by the grievant in her August 26, 2024 grievance do not constitute a claim that qualifies for a hearing under the grievance procedure.<sup>17</sup>

EDR's qualification rulings are final and nonappealable.<sup>18</sup>

*Christopher M. Grab*  
Director  
Office of Employment Dispute Resolution

---

<sup>17</sup> See *Grievance Procedure Manual* § 4.1.

<sup>18</sup> Va. Code § 2.2-1202.1(5).