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**QUALIFICATION RULING**

In the matter of Virginia Military Institute  
Ruling Number 2025-5804  
January 16, 2025

The grievant has requested a ruling from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) as to whether her September 6, 2024 grievance with Virginia Military Institute (the “institute” or “agency”) qualifies for a hearing. For the reasons articulated below, the grievance is partially qualified for a hearing.

**FACTS**

On or about September 6, 2024, the grievant filed a grievance challenging a Group II Written Notice, with an issue date of August 27, 2024. The grievant also appears to challenge a performance improvement plan that she had received on June 28, 2024. The grievant alleges that, following her receipt of the performance improvement plan, the institute stopped paying her a salary increase, which she had been receiving as a renewable “stipend.” The grievant contends that some or all of these actions were motivated by retaliation against the grievant for challenging performance feedback she received.

After proceeding through the management resolution steps, the agency head declined to grant relief, stating that the “[d]iscipline level is to remain a Level 2.” The agency head also determined that the grievance was not qualified for a hearing. The grievant has now appealed that determination.

**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>1</sup> Actions that automatically qualify for a hearing include the issuance of formal discipline, such as a Written Notice.<sup>2</sup> More generally, however, the grievance procedure limits grievances that qualify for a hearing to those that involve “adverse employment actions.”<sup>3</sup> An adverse employment action

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<sup>1</sup> See *Grievance Procedure Manual* § 4.1.

<sup>2</sup> *Id.* § 4.1(a); see Va. Code § 2.2-3004(A).

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

involves an act or omission by the employer that results in “harm” or “injury” to an “identifiable term or condition of employment.”<sup>4</sup>

### *Written Notice*

In this case, the parties do not appear to dispute that the agency’s issuance of a formal Written Notice on August 27, 2024 is among the actions challenged by the grievance.<sup>5</sup> Because such formal disciplinary actions automatically qualify for a hearing under the grievance statutes and procedure,<sup>6</sup> the grievance qualifies for a hearing to the extent that it challenges the August 27, 2024 Group II Written Notice.

### *Performance Improvement Plan*

The grievance can also reasonably be read to challenge the performance improvement plan issued to the grievant on June 28, 2024. A performance improvement plan is an example of an informal supervisory/corrective action that is not equivalent to a written notice of formal discipline.<sup>7</sup> It does not generally rise to the level of an adverse employment action because such an action, in and of itself, does not negatively affect the terms, conditions, or benefits of employment. Therefore, the performance improvement plan itself does not qualify for a hearing as an independent issue.

However, the grievant alleges that this performance improvement plan caused the institute to cancel or not renew a pay increase she had been receiving. As explained above, informal corrective actions do not normally include adverse effects to terms and conditions of employment – such as pay. Moreover, reductions in pay are not contemplated by the provisions of DHRM Policy 1.60, *Standards of Conduct*, that relate to informal corrective actions. The record suggests that management may have intended to renew the grievant’s “stipend,” but ultimately did not do so. Although we draw no conclusions as to whether this alleged omission was consistent with applicable laws and policies, the sequence of events raises a sufficient question whether the alleged non-renewal of the grievant’s stipend – an adverse action – was due to unsatisfactory job performance.<sup>8</sup> Further, non-renewal and/or non-payment is within the scope of the issues appropriately grieved to the extent it would have affected the grievant’s pay within the 30 calendar days prior to September 6, 2024 – the date she initiated her grievance.<sup>9</sup> Therefore, this issue is qualified for a hearing.

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<sup>4</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>5</sup> See DHRM Policy 1.60, *Standards of Conduct*, at 9 (identifying a Written Notice as a “disciplinary action” that is “formal” in nature, as opposed to “corrective”).

<sup>6</sup> Va. Code § 2.2-3004(A); *Grievance Procedure Manual* § 4.1(a).

<sup>7</sup> See DHRM Policy 1.60, *Standards of Conduct*, at 8-9.

<sup>8</sup> See Va. Code 2.2-3004(A).

<sup>9</sup> See *Rules for Conducting Grievance Hearings* § VI(C).

In addition, although the performance improvement plan itself is not qualified as an independent issue, a hearing officer could consider evidence and argument regarding the performance improvement plan to the extent it is relevant to the Group II Written Notice and/or the alleged non-renewal of the grievant's stipend.

In sum, the grievance is qualified to the extent it challenges the Group II Written Notice dated August 27, 2024 and the institute's alleged non-renewal of a salary increase for reasons of unsatisfactory performance. The agency is directed to request the appointment of a hearing officer by submitting a fully completed Form B **within five workdays** of the date of this ruling.

EDR's rulings on qualification and consolidation are final and nonappealable.<sup>10</sup>

*Christopher M. Grab*

Director

Office of Employment Dispute Resolution

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<sup>10</sup> See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).