



JANET L. LAWSON
DIRECTOR

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

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

COMPLIANCE and QUALIFICATION RULING

In the matter of the University of Virginia Medical Center
Ruling Number 2025-5835
February 24, 2025

The University of Virginia Medical Center (the “agency”) has requested a ruling from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) on whether the grievant’s December 19, 2024 grievance should be dismissed. For the reasons discussed below and in consideration of the unusual posture of this matter, EDR declines to grant the agency’s request.

FACTS and PROCEDURAL HISTORY

On November 22, 2024, the agency removed the grievant from his position citing “just cause” under its policies. The grievant submitted a dismissal grievance to EDR on or about December 19, 2024, to challenge his separation from employment. A hearing officer was appointed effective January 27, 2025. On January 31, 2025, the agency elected to rescind the removal for just cause and convert the grievant’s separation into a notice of cessation of employment pursuant to agency policy. The agency now seeks to have the grievance dismissed.¹

DISCUSSION

EDR has held in the past that a separation by Notice of Appointment Cessation is not considered a “dismissal” as defined by the *Grievance Procedure Manual*.² Therefore, the agency is correct to note that this grievance no longer falls under the dismissal grievance process. In such situations in the past, the grievance would be redirected to proceed through the resolution steps.³ However, in this situation, the agency notes that such resolution steps would be “redundant and unnecessary.” Accordingly, as we do not believe that the grievant would be seeking to avail himself of these resolution steps and this matter has already been appointed to a hearing officer, our review will address whether this grievance remains qualified for a hearing and may proceed.

¹ Additional facts will be included later in this ruling as relevant to a discussion of the issues.

² *E.g.*, EDR Ruling No. 2014-3756.

³ *E.g.*, *id.*

Although state employees with access to the grievance procedure may generally grieve anything related to their employment, only certain grievances qualify for a hearing.⁴ The grievant's claims in this case include assertions of discrimination on the basis of gender, disability, and veteran (military) status, which are claims that may qualify for hearing.⁵ For a claim of discrimination to qualify for a grievance hearing, the grievance must present facts that raise a sufficient question as to whether the issues describe an adverse employment action that has resulted from prohibited discrimination. However, if the agency provides a legitimate, nondiscriminatory business reason for the acts or omissions grieved, the grievance will not be qualified for hearing absent sufficient evidence that the agency's proffered justification was a pretext for discrimination.⁶

The grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions."⁷ 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."⁸ While the agency asserts there has been no adverse employment action, this grievance involves job loss and, therefore, clearly challenges an adverse employment action.

Based on our evaluation of the information available, there are factual questions about the grievant's claims of discrimination that are not resolvable at this level. For example, while the grievance contains limited information about the claims of discrimination, a dismissal grievance is not usually required to include a detailed recitation of all facts in support of such a claim at this stage. As stated above, in a qualification ruling, EDR normally reviews such claims against the agency's stated nondiscriminatory justification for the personnel action. Here, however, the agency has essentially rescinded its "for cause" basis for the grievant's separation, and so the matter is less clear as to any nondiscriminatory justification. In addition, while the separation is currently on the basis of a notice of cessation of employment, it is apparent that the agency first sought to remove the grievant for the reasons described in the "for cause" removal paperwork. However, a notice of cessation of employment cannot be issued for an improper or unlawful reason, such as discrimination. Based on consideration of these factors and the case's unusual posture, we cannot say that the grievant's claims of discrimination have been effectively rebutted at this stage. Furthermore, we would acknowledge the grievant's arguments that challenged some of the agency's "for cause" bases for removal as false. If evidence is found to substantiate the grievant's arguments in this regard, that could further support the grievant's claims of discrimination. Such issues of disputed fact are more properly addressed at hearing to allow for a full consideration of the relevant evidence and issues. Therefore, because we are unable to resolve these factual

⁴ See *Grievance Procedure Manual* § 4.1.

⁵ *Grievance Procedure Manual* § 4.1(b); see also Va. Code § 2.2-3004(A).

⁶ See *Strothers v. City of Laurel, Md.*, 895 F.3d 317, 327-28 (4th Cir. 2018); see, e.g., EDR Ruling No. 2017-4549.

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

⁸ 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").

questions against the grievant, we find that the grievance raises a sufficient question of discrimination to qualify for a hearing.

CONCLUSION

For the reasons explained herein, the dismissal grievance remains qualified for hearing in full. At the hearing, the grievant will have the burden to prove his claims challenging the notice of cessation of employment.⁹ If he prevails, the hearing officer will have authority to order appropriate remedies, potentially including reinstatement, back pay and back benefits, rescission of the notice of cessation of employment, and “order[s] . . . to create an environment free from discrimination and/or retaliation” or “to take appropriate corrective actions necessary to cure [a sustained policy] violation and/or minimize its recurrence.”¹⁰

Because the agency has already submitted its Form B and the matter has already been appointed to a hearing officer, the case will accordingly proceed and not be dismissed. This ruling is not intended to prevent or discourage the parties from resolving the underlying issues outside the context of a hearing. Should the parties wish to pursue resolution of the issues herein prior to a hearing date, EDR is available to assist in such any efforts as desired and appropriate.

EDR’s qualification and compliance rulings are final and nonappealable.¹¹

Christopher M. Grab
Director
Office of Employment Dispute Resolution

⁹ *Grievance Procedure Manual* § 5.8; *Rules for Conducting Grievance Hearings* § VI(C).

¹⁰ *Rules for Conducting Grievance Hearings* § VI(C)(1), (3).

¹¹ See Va. Code § 2.2-1202.1(5).