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QUALIFICATION RULING

In the matter of the Department of Corrections
Ruling Number 2025-5906
August 7, 2025

The grievant has requested a ruling from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) on whether her grievance initiated on May 8, 2025 with the Department of Corrections (the "agency") qualifies for a hearing. For the reasons discussed below, the grievance is not qualified for hearing.

FACTS

On or about May 8, 2025, the grievant filed an expedited grievance contesting the receipt of a Notice of Improvement Needed (NOIN) issued on April 10, receiving a "Below Contributor" rating on two core responsibilities of her annual performance evaluation on or about December 19, 2024, and additionally citing to a pattern of harassment and retaliation. As examples of harassment and retaliation, the grievant primarily points to the NOIN and "Below Contributor" sub-ratings but also mentions that she has been denied the ability to work overtime despite consistently working overtime shifts since April 2024. Finally, she adds that, as alleged evidence of harassment and/or retaliation, she has been under investigation by the Fraud, Waste, and Abuse Hotline. For relief, the grievant requested that she be fairly evaluated, no longer supervised by her current supervisor, that the NOIN be removed from her file, and that she be approved to work overtime hours.

As to the overtime issue, the grievant claims that, on June 5, 2024, she was informed by her supervisor that working overtime required maintaining her regular job duties. On November 24, 2024, she claims that, after telling a watch commander that she could not stay for a certain overtime shift, her response was reported to her supervisor as refusing a post assignment. On December 9, the grievant was informed that she was under investigation by the Fraud, Waste, and Abuse Hotline regarding alleged abuse of overtime and accusations of refusing post assignments. As part of the investigation, the grievant was told to provide verification of certain trainings she was supposed to complete, and when she could not do so, she was removed from the overtime schedule. However, she states she completed the training on December 19 and verification was acknowledged by the agency.

The grievant was also denied the ability to work overtime due to alleged performance deficiencies. The grievant was first told during the NOIN meeting with her direct supervisor on

April 10, 2025, that overtime scheduling would not be approved until she worked on her job performance. On April 30, after the grievant asked for and was denied overtime scheduling, the agency informed the grievant that, per the NOIN, "there may be limitations on overtime until core job performance improves." The agency followed up on this on June 5, stating that "there needs to be specific goals/milestones identified for [the grievant] to work towards to earn back [her] overtime." Sometime later, the agency provided the grievant with a list of tasks to complete through July 14, 2025 in order for overtime scheduling to be authorized again.

The grievance proceeded from the single management step to the agency head, who declined to grant relief or to qualify the grievance for a hearing. The grievant has appealed that determination to EDR. Since this determination was appealed, EDR has confirmed with the agency that the grievant completed the mentioned goals/milestones, has been approved to work overtime hours as of July 15, and began working overtime on July 19.

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 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 policy may have been misapplied or unfairly applied.[3]

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 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."[5] 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."[6]

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

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[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).
[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] 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)).

does not have the authority to grant the relief requested by the grievant and no other effectual relief is available.[7]

NOIN and Performance Evaluation

While the grievant alleges a pattern of harassment and retaliation, we cannot find that the May 8 grievance sufficiently articulates an adverse employment action to meet the threshold requirement to qualify for a hearing. The principal management action identified in the grievance is the grievant's receipt of the NOIN. An NOIN is an example of an informal supervisory/corrective action that is not equivalent to a written notice of formal discipline.[8] 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. No aspect of the grievance record before EDR indicates that the NOIN itself affected the grievant's terms or conditions of employment.[9]

Similarly, while an *overall* performance evaluation rating of "Below Contributor" qualifies as an adverse employment action, receiving "Below Contributor" sub-ratings, or individual ratings on core responsibilities, do not by themselves qualify as adverse employment actions. In general, a satisfactory performance evaluation is not an adverse employment action.[10] Even if one or more "Below Contributor" sub-ratings on an overall satisfactory evaluation could be an adverse employment action in some circumstances, "a poor performance evaluation is actionable only where the employer subsequently uses the evaluation as a basis to detrimentally alter the terms or conditions of the recipient's employment."[11]

Here, the grievant's overall performance rating on her 2024 annual evaluation was "Contributor." In five performance categories, the grievant received "Contributor" sub-ratings. However, the grievant takes issue with two "Below Contributor" sub-ratings in the performance categories of "program delivery" and "collaboration and civility." The grievant alleges that these sub-ratings and their purported justifications are inaccurate and/or retaliatory. Although the grievant's concerns about these comments as an appropriate basis for a "Below Contributor" rating are understandable, they ultimately do not meet the threshold standard to qualify for a hearing, as they do not, in and of themselves, appear to implicate or harm an identifiable term or condition of the grievant's employment. Accordingly, issues related to the grievant's overall satisfactory annual performance rating do not qualify for a hearing.

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[7] *See*, *e.g.*, EDR Ruling No. 2021-5261; EDR Ruling No. 2017-4477.
[8] *See* DHRM Policy 1.60, *Standards of Conduct*, at 7-9; DHRM Policy 1.40, *Performance Planning and Evaluation* ("Identifying Substandard Performance").
[9] As will be discussed later, while the NOIN did seemingly impact the grievant's ability to work overtime, the agency has since removed limitations on the grievant's ability to work overtime.
[10] *E.g.*, EDR Ruling No. 2013-3580; EDR Ruling No. 2010-2358; EDR Ruling No. 2008-1986; *see also* James v. Booz-Allen & Hamilton, Inc., 368 F.3d 371, 377-378 (4th Cir. 2004) (holding that, while an employee's performance rating was lower than on his previous evaluation, there was no adverse employment action where he failed to show that the evaluation was used as a basis to detrimentally alter the terms or conditions of his employment).
[11] *James*, 368 F.3d at 377 (citation and internal quotation marks omitted). Although DHRM Policy 1.40, *Performance Planning and Evaluation*, establishes remedial procedures for substandard performance, these procedures do not apply unless an employee's *overall* performance rating is "Below Contributor." Policy 1.40 does not mandate any adverse results for a "Below Contributor" sub-rating where the overall rating is satisfactory.

Overtime Authorization

Finally, the grievant alleges that she has been denied the ability to work overtime on multiple occasions, in one instance due to allegedly not submitting training verifications and in another instance being given performance objectives that were required to be completed before overtime scheduling can be authorized. For the purposes of the grievant's claim relating to overtime, there is an adverse employment action, as the grievant's ability to receive compensation has been affected. Nevertheless, as of the date of this ruling, the grievant has been approved for overtime scheduling, as the agency has confirmed the grievant completed the designated goals/milestones, and there appears to be no outstanding issues relating to the grievant's training verifications. For these reasons, the issue of being denied overtime is now moot and EDR declines to opine further on this matter.[12]

CONCLUSION

For the reasons expressed in this ruling, the May 8, 2025 grievance is not qualified for a hearing. EDR's qualification rulings are final and nonappealable.[13]

Christopher M. Grab
Director
Office of Employment Dispute Resolution

[12] While this grievance does not have any outstanding issues that qualify for a hearing, the determination made in this ruling does not prevent the grievant from filing an additional grievance(s) if she continues to experience issues with being denied the ability to work overtime or other allegations of harassment or retaliation.
[13] Va. Code § 2.2-1202.1(5).