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QUALIFICATION RULING

In the matter of the Department of Corrections
Ruling Number 2025-5911
August 26, 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 March 6, 2025 grievance with the Department of Corrections (the "agency") qualifies for a hearing. For the reasons discussed below, the grievance is not qualified for a hearing.

FACTS

The grievant works as a registered nurse for the agency. On December 26, 2024, the grievant experienced an encounter with another coworker (Coworker A), which she perceived as rude and unprofessional and promptly reported the incident to her supervisor. The alleged incident involved Coworker A making rude and condescending remarks towards the grievant in the presence of an inmate, followed by Coworker A continuing to make condescending remarks to her about an assignment after the inmate visit concluded. In addition to the events that transpired on December 26, the grievant also mentioned a similar incident by Coworker A that took place on November 2, where she learned that Coworker A made a disparaging remark about her to another coworker. The grievant followed up with the agency on January 11 to affirm that she still wished to pursue the complaint further. According to the agency, their Employee Relations Unit received the complaint on January 13. A review was then conducted by Employe Relations with their findings being issued on February 13.

On or about March 6, 2025, the grievant initiated a grievance alleging ongoing workplace harassment and a hostile working environment being perpetuated by Coworker A and that the agency has not adequately responded to her complaint. The grievance proceeded through the management steps and the agency head ultimately declined to grant the grievant's requested relief or to qualify the grievance for a hearing. The agency head explained that there was no evidence to support claims of harassment that would warrant a formal investigation by the Employee Relations Unit but determined that the appropriate course of action was to have management team leaders within the grievant's unit address the matter. Nonetheless, the agency head added that the grievant's unit ultimately forwarded the complaint to Employee Relations and asserted that the matter has now been addressed. The grievant now appeals the agency's head's determination.

The grievant in her appeal to EDR states that she continues to experience ongoing harassment from Coworker A. She adds that she has yet to hear from the agency regarding the findings of her complaint and asserts that there is not a documented complaint on file. The grievant emphasizes in her appeal that the primary basis for the filing of her grievance is the way in which the agency has handled her complaint. To this point, she states that, while the agency asserted that the matter was addressed, it was done without any "meaningful engagement" with the grievant after conclusion of the Employee Relations review.

Finally, the grievant has since relayed to EDR that she has continued to experience harassment in the form of Coworker A making condescending remarks about her to other coworkers and exhibiting other condescending behaviors directly towards the grievant. Specifically, she mentions (1) an incident prior to the filing of this grievance where Coworker A made a condescending remark about her to a coworker, (2) another incident of a condescending remark made to the grievant prior to the filing of her grievance, (3) being asked by her supervisor about handing an empty syringe to Coworker A prior to the filing of her grievance, (4) on ongoing situation of Coworker A tossing papers on a paper shredder while the grievant shreds papers, and (5) an incident on July 31 where Coworker A allegedly documented in his charts that there was no nursing staff available when the grievant was in fact available. She adds that she has reported most if not all these incidents to her chain of command.

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] 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.

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

[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 id.* § 4.1(b); *see* Va. Code § 2.2-3004(A).

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

The grievance describes claims of a hostile work environment. Although DHRM Policy 2.35 prohibits workplace harassment[8] and bullying,[9] alleged violations must still meet the threshold requirements to qualify for a hearing. Whether discriminatory or non-discriminatory, harassment or bullying may 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; and (3) imputable on some factual basis to the agency.[10] As to the second element, the grievant must show that they perceived, and an objective reasonable person would perceive, the environment to be abusive or hostile.[11] "[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."[12]

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[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)).

[7] *See*, *e.g.*, EDR Ruling No. 2021-5261; EDR Ruling No. 2017-4477.

[8] 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."

[9] 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."

[10] *See* Gilliam v. S.C. Dep't of Juvenile Justice, 474 F.3d 134, 142 (4th Cir. 2007).

[11] 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)); *see* DHRM Policy Guide – Civility in the Workplace ("A 'reasonable person' standard is applied when assessing if behaviors should be considered offensive or inappropriate.").

[12] *Harris*, 510 U.S. at 23 (1993); *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

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. Thus, 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.[13] Accordingly, where an employee reports that work interactions have taken a harassing or bullying tone, Policy 2.35 requires agencies to determine in the first instance whether such perceptions are supported by the facts. Where 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.

The grievant's description of workplace conduct she has experienced since at least November 2024 includes specific examples of condescending behavior and remarks by Coworker A, such as remarks made about her to other coworkers, criticizing her actions while working together, and otherwise acting in an unprofessional manner when in her vicinity. Importantly, however, some of these incidents (those mentioned in November and December 2024) have been addressed by the agency via a review conducted by Employee Relations. The grievant has since expressed to EDR that similar incidents continue to occur after the review was initiated in January 2025. Regarding these more recent incidents, the grievant has stated that she has reported most if not all the incidents to her supervisor. Agency correspondence with EDR has suggested that the agency is aware of only one of these incidents – an incident on July 31 where Coworker A allegedly reported that no nursing staff was available to assist him when in fact the grievant was available. The agency stated that the grievant's supervisor was currently investigating the matter, but that they were unaware of any additional incidents that have been reported.

Having thoroughly reviewed the grievance record and the information provided by the parties, EDR cannot find that the grievant has alleged facts sufficient to qualify for a hearing at this time. We acknowledge that at least some of these various allegations, if true, could constitute prohibited conduct under DHRM Policy 2.35 and, as such, would likely have triggered the agency's affirmative obligations to intervene, express strong disapproval of any forms of prohibited conduct, and take immediate action to eliminate any hostile work environment. However, we also acknowledge the agency's assertions that it did take affirmative actions in response to the grievant's complaints. Indeed, the agency has since relayed information to EDR that a review was conducted by the agency's Employee Relations Unit and that appropriate corrective action was taken to address the concerns. While the grievant is unsatisfied with the agency's response to date, EDR cannot find at this time that management's approach has violated

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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).

[13] Under Policy 2.35(D)(4), "[a]gency managers and supervisors are required to: Stop any prohibited conduct of which they are aware, whether or not a complaint has been made; Express strong disapproval of all forms of prohibited conduct; Intervene when they observe any acts that may be considered prohibited conduct; Take 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 . . . ."

any mandatory policy provision or is so unfair as to amount to a disregard of an applicable policy's intent.

Regarding the incidents that the grievant has listed and reported since Employee Relations' review in January, it appears that the agency has only been made aware of one of those incidents – the July 31 incident. The grievant's supervisor has confirmed that she has been in the process of investigating this incident but does not mention the other incidents listed by the grievant. As explained above, Policy 2.35 mandates that agencies respond to credible complaints of prohibited conduct and take steps to ensure that such conduct does not continue. Although the more recent allegations that occurred after the filing of the grievance are not within the scope of the grievance under review in this ruling, the agency is encouraged to take action appropriate to the circumstances based on information received from the grievant. To the extent the agency is unaware of the specific allegations, EDR would recommend follow-up with the grievant to determine what action, if any, may be appropriate.

CONCLUSION

For the reasons described above, EDR concludes that this grievance does not raise a sufficient question whether the grievant has experienced an adverse employment action and, thus, it does not qualify for a hearing under the grievance procedure at this time.[14] This ruling only determines that the grievance does not qualify for a hearing and does not determine that any of the claims asserted were invalid. Further, nothing in this ruling is meant to prevent the grievant from filing a subsequent grievance addressing new developments related to any of these issues in the future. To the extent that these continuing issues give rise to an adverse employment action, a subsequent grievance could qualify for a hearing on that basis.

EDR's qualification rulings are final and nonappealable.[15]

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[14] *See Grievance Procedure Manual* § 4.1.
[15] *See* Va. Code § 2.2-1202.1(5).