Issue: Qualification – Management Actions (misapplication of policy); Ruling Date: February 2, 2017; Ruling No. 2017-4461; Agency: Department of Motor Vehicles; Outcome: Not Qualified.

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

QUALIFICATION RULING

In the matter of the Department of Motor Vehicles
Ruling Number 2017-4461
February 2, 2017

The grievant has requested a ruling from the Office of Employment Dispute Resolution[1] ("EDR") at the Department of Human Resource Management ("DHRM") on whether his September 9, 2016 grievance with the Department of Motor Vehicles ("agency") qualifies for a hearing. For the following reasons, this grievance does not qualify for a hearing.

FACTS

The grievant is employed with the agency as a Driver's License Quality Assurance Specialist. On or about September 9, 2016, he initiated a grievance challenging a change in agency practices regarding centralization of the Commercial Driver's License Center. Whereas the grievant had previously been assigned a state van for his use in commuting to various testing sites, vans are now shared between employees and required to be parked at a centralized location. As such, the grievant has to travel to the centralized location in order to pick up a van to travel to the various testing sites. The grievant asserts that he now incurs increased commute times, adding a financial burden to him in performing his job. After proceeding through the management steps, the agency head declined to qualify the grievance for a hearing and the grievant now appeals that determination.

DISCUSSION

By statute and under the grievance procedure, complaints relating solely to issues such as the methods, means, and personnel by which work activities are to be carried out, as well as hiring, promotion, transfer, assignment, and retention of employees within the agency "shall not proceed to a hearing" unless there is sufficient evidence of discrimination, retaliation, unwarranted discipline, or a misapplication or unfair application of policy.[2] The grievant has not alleged discrimination, retaliation, or discipline. Therefore, the grievant's claims could only qualify for hearing based upon a theory that the agency has misapplied or unfairly applied policy.

For an allegation of misapplication of policy or unfair application of policy to qualify for a hearing, there must be facts that raise a sufficient question as to whether management violated

[1] Effective January 1, 2017, the Office of Employment Dispute Resolution merged with another office area within the Department of Human Resource Management, the Office of Equal Employment Services. Because full updates have not yet been made to the *Grievance Procedure Manual*, this office will be referred to as "EDR" in this ruling to alleviate any confusion. EDR's role with regard to the grievance procedure remains the same post-merger.
[2] Va. Code § 2.2-3004(C); *Grievance Procedure Manual* § 4.1(c).

a mandatory policy provision, or whether the challenged action, in its totality, was so unfair as to amount to a disregard of the intent of the applicable policy. Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions."[3] Thus, typically, a threshold question is whether the grievant has suffered an adverse employment action. An adverse employment action is defined as a "tangible employment action constitut[ing] a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits."[4] Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one's employment.[5]

Under the facts presented to EDR, it does not appear that the grievant has experienced an adverse employment action. A transfer or reassignment, or denial thereof, may constitute an adverse employment action if a grievant can show that the transfer/reassignment had some significant detrimental effect on the terms, conditions, or benefits of his/her employment.[6] A reassignment or transfer with significantly different responsibilities, or one providing reduced opportunities for promotion can constitute an adverse employment action, depending on all the facts and circumstances.[7] However, in general, a lateral transfer will not rise to the level of an adverse employment action.[8] Further, subjective preferences do not render an employment action adverse without sufficient objective indications of a detrimental effect.[9]

Based on the information presented in this grievance, the grievant is now required to utilize a centralized work location and share a state van with other employees. Because the van is now parked at a central location rather than a location close to the grievant's home, he incurs extra travel time and expenses in picking up the van should he wish to use it for travel rather than his personal vehicle. He maintains his same salary, job title and responsibilities. While EDR is not unsympathetic to the grievant, nevertheless, he has presented insufficient evidence that these changes have had a significant detrimental effect on his employment. An employee's unmet preference regarding job location is not enough to result in an adverse employment action. Accordingly, this grievance does not qualify for a hearing.

EDR's qualification rulings are final and nonappealable.[10]

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[3] *See Grievance Procedure Manual* § 4.1(b).
[4] Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 761 (1998).
[5] Holland v. Wash. Homes, Inc., 487 F.3d 208, 219 (4th Cir. 2007) (citation omitted).
[6] *See id.*
[7] *See* James v. Booz-Allen & Hamilton, Inc., 368 F.3d 371, 375-77 (4th Cir. 2004); Boone v. Goldin, 178 F.3d 253, 255-256 (4th Cir. 1999); *see also* Edmonson v. Potter, 118 Fed. Appx. 726, 729 (4th Cir. 2004).
[8] *See* Williams v. Bristol-Myers Squibb Co., 85 F.3d 270, 274 (7th Cir. 1996).
[9] *See, e.g.*, Jones v. D.C. Dep't of Corr., 429 F.3d 276, 284 (D.C. Cir. 2005); *James*, 368 F.3d at 377; Fitzgerald v. Ennis Bus. Forms, Inc., No. 7:05CV00782, 2007 U.S. Dist. LEXIS 875, at *14-15 (W.D. Va. Jan. 8, 2007); Stout v. Kimberly Clark Corp., 201 F. Supp. 2d 593, 602-03 (M.D.N.C. 2002).
[10] Va. Code § 2.2-1202.1(5).