

Issue: Reconsidered Qualification – Performance (arbitrary/capricious evaluation);
Ruling Date: April 13, 2017; Ruling No. 2017-4533; Agency: Department of Social
Services; Outcome: Not Qualified.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Employment Dispute Resolution¹

RECONSIDERED QUALIFICATION RULING

In the matter of the Department of Social Services
Ruling Number 2017-4533
April 13, 2017

The grievant has requested that the Office of Employment Dispute Resolution (EDR) reconsider its qualification determination in Ruling Number 2017-4511 (the initial qualification ruling). For the reasons discussed below, EDR finds no error with the initial qualification determination.

The grievant asserts that EDR erred in concluding that her December 21, 2016 grievance, which challenged her 2015-2016 performance evaluation, did not qualify for hearing. In particular, the grievant asserts that the agency wrongfully failed to allow her 30 days after the issuance of a Notice of Improvement Needed (“NOIN”) before performing its yearly performance evaluation. In addition, the grievant argues that the agency impermissibly included a period of short-term disability in its assessment of her performance and penalized her for that absence.

As noted in the initial ruling, DHRM Policy 1.40, *Performance Planning and Evaluation*, does not mandate any period for improvement from the issuance of a NOIN to the assessment of a grievant’s performance in a yearly evaluation. Indeed, nothing in policy specifically prohibits an agency from giving an employee a NOIN at the same time as a ‘below contributor’ performance evaluation. As such, the grievant’s argument that the agency failed to provide her a 30-day improvement period lacks merit.

The grievant also asserts that the agency improperly evaluated the grievant on less than a 12-month period, given her absence from work on short-term disability leave, or, in the alternative, impermissibly used that short-term disability leave of absence against her. Contrary to the grievant’s suggestion, however, there is no requirement that the grievant’s evaluation period be extended due to her leave.² Further, it does not appear the agency counted the grievant’s leave of absence against her when assessing her performance. Rather, the information reviewed by EDR supports finding that the agency properly assessed the grievant’s performance based on those periods when she was not on leave related to her own or a family member’s

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 See DHRM Policy 1.40, *Performance Planning and Evaluation*.

medical needs. EDR's qualification determination as to the performance evaluation in this case was based on the grievant's performance during the cycle without consideration of her leave of absence.

EDR has carefully considered the arguments and information provided by the grievant; however, the analysis of the underlying issue remains unchanged. As such, EDR concludes that there are no grounds to reconsider or change the analysis of EDR's initial qualification ruling.

EDR's rulings are final and nonappealable.³



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Office of Employment Dispute Resolution

³ See Va. Code § 2.2-1202.1(5).