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**QUALIFICATION RULING**

In the matter of the Virginia Department of Corrections  
Ruling Number 2022-5350  
April 13, 2022

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 December 6, 2021 grievance with Virginia Department of Corrections (the “agency”) qualifies for a hearing. For the reasons discussed below, this grievance is not qualified for a hearing.

FACTS

The grievant was on short-term disability leave from August 20, 2021 to November 15, 2021. During this period, the grievant’s disability benefits provided for her to be paid at 60 percent of her regular salary, with the option to use her personal leave to supplement that amount up to 100 percent of her regular salary.<sup>1</sup> Although the grievant indicated to the agency’s human resources staff that she did not want to invoke this supplementation option, she discovered upon her return to work that her annual leave balance had in fact been depleted as a salary supplement. The agency proposed to correct the mistake by restoring the grievant’s leave and deducting the amount of its overpayment from the grievant’s subsequent paychecks. However, on or about December 6, 2021, the grievant initiated a grievance alleging outstanding issues with her pay. Specifically, she argued that she was “taxed on all paystubs,” but those withholdings were “not returned.” During the management resolution steps, the agency explained that it did not reimburse tax withholdings because an employee’s tax filings account for any under- or over-taxation. The agency head declined to qualify the grievance for a hearing, and the grievant now appeals that determination to EDR.

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<sup>1</sup> See DHRM Policy 4.57, *Virginia Sickness and Disability Program*, at 13-14.

## 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.<sup>2</sup> Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.<sup>3</sup> Thus, claims relating solely to the establishment and revision of salaries, wages, and general benefits 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 or agency policy may have been misapplied or unfairly applied.<sup>4</sup> 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.<sup>5</sup>

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions."<sup>6</sup> 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."<sup>7</sup> Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one's employment.<sup>8</sup>

The grievant argues that the agency initially misapplied state disability-leave policy by drawing down her leave balance against her express wishes,<sup>9</sup> which the grievant had to remedy upon her return from disability leave. However, it appears that the agency acknowledged the error and subsequently took steps to correct it. The record presents no dispute that restoring the grievant's leave meant that the corresponding supplemental income she received would be considered an overpayment. The available evidence indicates the gross overpayment amount was approximately \$3,830, which is also not in dispute. However, the grievant contends that "all of the money that was taken out for regular pay [during her short-term disability period] . . . was added as income that [she] earned, causing [her] tax rate [to be] higher at the end of the year." She claims this amounts to "double taxing." Thus, in her request for a grievance hearing, the grievant appears to challenge whether the agency fully corrected its overpayment and accurately reported her true income for the 2021 tax year.

Upon a thorough review of all the evidence presented by the parties, EDR cannot conclude that the grievance presents a sufficient question whether the agency has misapplied or unfairly

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<sup>2</sup> See *Grievance Procedure Manual* §§ 4.1 (a), (b).

<sup>3</sup> See Va. Code § 2.2-3004(B).

<sup>4</sup> *Id.* § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).

<sup>5</sup> See, e.g., EDR Ruling No. 2022-5309.

<sup>6</sup> See *Grievance Procedure Manual* § 4.1(b).

<sup>7</sup> *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

<sup>8</sup> *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007) (citation omitted).

<sup>9</sup> See DHRM Policy 4.57, *Virginia Sickness and Disability Program*.

applied policy in recovering its gross overpayment of the grievant's salary. According to the agency, the grievant earned a bonus to be paid out on December 1, 2021; the agency did not pay out the bonus and instead deducted the bonus amount from the overpayment amount. The agency then deducted approximately half the remaining total from the gross amount of the grievant's December 16, 2021 paycheck, and finally deducted the other half from the gross amount of her December 31, 2021 paycheck. The agency presented this repayment plan to the grievant on November 22, 2021. Thus, it appears that the agency fully deducted the overpayment amount from the grievant's paychecks by the end of the 2021 tax year, such that the overpayment amount was not reflected on the grievant's reported income.

The grievant has not pointed to any applicable law or policy, and we identify none, that mandated the agency to take a different approach. The agency has indicated that it has a policy "of not reimbursing taxes [because] Federal taxes are adjusted throughout the year based on earnings and tax withholding information," and "[a]ny over or under taxation is handled by the IRS" when an employee files their taxes. The agency has further indicated that it follows the overpayment procedures mandated by the Virginia Department of Accounts. In its *Commonwealth Accounting Policies and Procedures ("CAPP") Manual*, the Department of Accounts requires agencies to "take appropriate steps to recover overpayments."<sup>10</sup> Such steps may involve "a mutually agreeable payroll docking schedule" that does not exceed the time period that the overpayment occurred.<sup>11</sup> When an employee repays overpaid wages from the current tax year, "it may be necessary to recover certain employee-paid deduction amounts," unless "the amount of the overpayment was for the entire pay period."<sup>12</sup> Although we observe that the record suggests a lack of clarity in the agency's discussions with the grievant about the proper procedures for overpayments, we find nothing to suggest that the agency's ultimate actions with respect to the overpayment violated any policy mandate or disregarded any applicable policy's intent.

Nevertheless, the grievant appears to contend that, by recovering the gross overpayment amount, the agency recovered money on which the grievant had already paid income taxes. The grievant argues that she should have received the erroneous tax withholdings back from the agency and, because she did not, her reported income was higher than the income she actually received (following the overpayment recovery). However, we are unable to identify evidence in the record to support these allegations. Because the agency deducted the gross overpayment amount from the grievant's gross pay in December 2021, tax withholdings for the grievant's December paychecks were accordingly reduced, offsetting earlier withholdings from the grievant's overpaid salary. The agency completed its full overpayment recovery by the end of the tax year, and we find no evidence to suggest that the recovery was not captured in the compensation reported on the grievant's IRS Form W-2 for the 2021 tax year. According to the grievant, she filed a single 2021 income tax return shortly after receiving her Form W-2 from the agency; she did not file quarterly returns during the tax year. Typically, a taxpayer's tax forms account for withholdings in excess of the taxpayer's ultimate tax obligation. Although the grievant has understandably been frustrated that the agency overpaid her and did not answer all of her questions about its recovery calculations, EDR finds nothing to indicate that the grievant's tax information may have been in error due to the agency's overpayment recovery.

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<sup>10</sup> *Commonwealth Accounting Policies and Procedures Manual*, "Unpaid Leaves of Absences and Overpayments," at 5. According to the *Manual*, agencies should establish written policies and procedures for the recovery of overpayments and provide these policies to employees. *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 6.

In conclusion, upon a thorough review of the record, EDR is unable to identify a sufficient question as to whether the agency misapplied or unfairly applied state or agency policy in the circumstances presented in this case. Accordingly, the grievance does not qualify for a hearing.

EDR's qualification rulings are final and nonappealable.<sup>13</sup>

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<sup>13</sup> See Va. Code § 2.2-1202.1(5).