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QUALIFICATION RULING

In the matter of the Department of State Police
Ruling Number 2023-5520
April 25, 2023

The grievant has requested a ruling from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) on whether his December 30, 2022 grievance with Department of State Police (the “agency”) qualifies for a hearing. For the reasons discussed below, this grievance is not qualified for a hearing.

FACTS

On or about December 30, 2022, the grievant initiated a grievance challenging his recent pay. The grievant claimed that three of his paychecks since November 1, 2022 included incorrect overtime payments, particularly a significant overpayment on December 1 and then no pay on December 16, 2022.¹ With respect to the December 1 paycheck, the grievant asserted that he had not yet been paid back the taxes taken from the overpayment. The grievant asserted that the errors caused “financial unpredictability” as the year ended, and also required significant time expenditure on the grievant’s part to make sure the errors were corrected. As relief, he sought to recover (1) taxes improperly withheld from his pay, (2) an “equal amount as liquidated damages” with interest, and (3) any attorney fees incurred during a grievance hearing on these issues. The agency head declined to qualify the grievance for a hearing, and the grievant has appealed that determination to EDR.

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.² The grievance procedure generally limits grievances that qualify for a hearing to those that involve “adverse employment actions.”³ Typically, then, a threshold question is whether the grievant has suffered an adverse employment action. An adverse employment action is defined as a “tangible employment action” constituting “a significant change in employment status, such as hiring, firing,

¹ Regarding the November 1, 2022 paycheck, it appears that on November 9, the grievant received another check for the overtime pay that was due but not included in the November 1 paycheck.

² See *Grievance Procedure Manual* §§ 4.1 (a), (b).

³ See *Grievance Procedure Manual* § 4.1(b).

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 For purposes of this ruling only, we assume that the grievance challenges an adverse employment action because it raises issues with the grievant’s pay.

Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.⁶ 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.⁷ 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.⁸

The parties do not appear to dispute that some of the grievant’s paychecks contained incorrect overtime amounts, or that subsequent paychecks adjusted these errors. However, the grievant claims that the agency’s adjustments failed to account for excessive tax withholdings on its overpayment to him. More generally, the grievant has expressed frustration that the agency does not appear to be accountable for failing to pay the grievant correctly and on time over multiple pay periods, which caused stress for his household.

The grievance record indicates that the grievant’s paycheck for December 1, 2022, included an extra credit for \$2,370.44. The parties agree that this amount represented an erroneous payment for overtime hours that the grievant did not work. To correct the error, the agency requested that the Department of Accounts recover the overpayment amount from the grievant’s next paycheck (December 16, 2022). However, it appears that the Department of Accounts determined that the post-deduction gross remainder would be insufficient to cover regular paycheck deductions for benefits and taxes. Accordingly, all debits and credits due to be processed in the December 16, 2022 paycheck were carried over to the subsequent paycheck on December 30, 2022. As a result, the actual pay noted on the grievant’s December 16 paycheck was zero.

Although the grievant does not appear to dispute the pay totals carried over to his December 30 paycheck, he argues that the agency’s adjustments do not correct for excessive tax withholding from his December 1 pay. Taxable income noted on that paycheck totaled \$6,183.83, with approximately 27 percent of that total withheld for state and federal taxes. However, the grievant argues that, by then deducting the gross overpayment amount on December 30, rather than the after-tax net, the agency caused him to overpay taxes.

⁴ Ray v. Int’l Paper Co., 909 F.3d 661, 667 (4th Cir. 2018) (quoting Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 761 (1998)).

⁵ Laird v. Fairfax County, 978 F.3d 887, 893 (4th Cir. 2020) (citing Holland v. Wash. Homes, Inc., 487 F.3d 208, 219 (4th Cir. 2007)) (an adverse employment action requires more than a change that the employee finds “less appealing”).

⁶ See Va. Code § 2.2-3004(B).

⁷ *Id.* § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).

⁸ See, e.g., EDR Ruling No. 2022-5309.

Upon a thorough review of all the evidence presented by the parties, including the pay stubs at issue and the grievant's tax forms, EDR cannot conclude that the grievance presents a sufficient question whether the agency has misapplied or unfairly applied policy in correcting its December 1 overpayment to the grievant. Although the agency appears to have been responsible for an administrative error that caused a significant overpayment to the grievant on December 1, the grievance record indicates that these pay issues were corrected by December 30 in accordance with procedures mandated by the Department of Accounts.⁹

The grievant disagrees, essentially arguing that, by recovering the gross overpayment amount, the agency recovered money on which he had already paid income taxes. However, because the agency appears to have deducted the gross overpayment amount from the grievant's gross pay for the December 30 paycheck, tax withholdings for that paycheck were accordingly reduced, which presumably would have offset earlier withholdings from the grievant's overpaid salary. Moreover, we find no evidence to suggest that the compensation reported on the grievant's IRS Form W-2 for the 2022 tax year failed to accurately capture the amounts that the grievant earned in taxable income and paid in tax withholdings, respectively, during the tax year. Typically, a taxpayer's tax forms and filings would account for any withholdings in excess of the taxpayer's ultimate tax obligation, which the Internal Revenue Service would then refund to the taxpayer. EDR is not aware of any restriction on agencies' use of gross amounts in the calculation of overpayment recovery.

EDR acknowledges that payroll discrepancies can be extremely disruptive to employees' personal financial planning. As such, we observe that these discrepancies may call for an employee relations response, in addition to prompt administrative correction, to restore the affected employee's trust that they will be compensated properly for their hours of work. However, notwithstanding the grievant's frustration about the significant uncertainty around his pay as the year ended, EDR finds nothing to indicate that the agency ultimately violated a mandatory policy provision such that relief could be granted at a grievance hearing.¹⁰ Because the record does not raise a sufficient question as to whether the agency misapplied or unfairly applied state or agency policy, we conclude that the grievance does not qualify for a hearing.

EDR's qualification rulings are final and nonappealable.¹¹

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⁹ The Department of Accounts requires agencies to "take appropriate steps to recover overpayments." *Commonwealth Accounting Policies and Procedures Manual*, "Unpaid Leaves of Absences and Overpayments," at 5. Such steps may involve "a mutually agreeable payroll docking schedule" that does not exceed the time period that the overpayment occurred. *Id.* 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." *Id.* at 6.

¹⁰ Under the grievance procedure, a hearing officer may order an award of backpay but does not have authority to award monetary damages. *Grievance Procedure Manual* § 5.9(a), (b). As part of his relief, the grievant requested liquidated damages pursuant to state and federal wage laws, which would not be in the hearing officer's power to grant. This ruling concludes only that the grievance does not qualify for a hearing; it does not address whether the grievant would be entitled to relief through another administrative or legal process.

¹¹ See Va. Code § 2.2-1202.1(5).