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QUALIFICATION RULING

In the matter of the Virginia Department of Motor Vehicles
Ruling Number 2023-5523
March 16, 2023

The grievant seeks a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management as to whether her December 5, 2022 grievance with the Virginia Department of Motor Vehicles (the “agency”) qualifies for a hearing. For the reasons set forth below, EDR finds that the grievance is not qualified for a hearing.

FACTS

On or about December 5, 2022, the grievant filed a grievance to challenge the denial of a December 1, 2022 bonus payment. Per action by the General Assembly in the state budget, “a one-time bonus payment of \$1000 [was] authorized for all eligible classified employees of the Executive Branch and other full-time employees of the Commonwealth (except for elected officials) who were employed as of August 10, 2022 and remain employed through December 1, 2022.”¹ Employees were eligible to receive the bonus payment only if they have attained an equivalent rating of at least “Contributor” on their most recent performance evaluation and have no active written notices under the Standards of Conduct within the preceding 12-month period (November 10, 2021 through November 10, 2022).² Because the grievant had received a Group II Written Notice on or about April 22, 2021, and per policy that disciplinary action remained active in her personnel file, the agency deemed her ineligible for the bonus. Among other assertions, the grievant argues that because she did not receive the Written Notice between November 10, 2021 and November 10, 2022, she should have received the bonus payment. After proceeding through the resolution steps, the agency head declined to grant relief or to qualify the grievance for a hearing. The grievant now appeals the latter 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.³ Additionally,

¹ DHRM FY23 Bonus Guidance and Instructions, *available* at <https://www.dhrm.virginia.gov/docs/default-source/compensationdocuments/fy23bonusguidance.pdf>.

² *Id.*

³ *See Grievance Procedure Manual* § 4.1.

the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.⁴ Thus, claims relating to issues such as the means, methods, and personnel by which work activities are to be carried out, as well as 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 policy may have been misapplied or unfairly applied.⁵ 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, while grievances that allege misapplication of policy may qualify for a hearing, the grievance procedure generally limits grievances that qualify to those that involve "adverse employment actions."⁶ Typically, then, the 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."⁷ Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one's employment.⁸ For purposes of this ruling only, we assume that the grievance sufficiently alleges an adverse employment action because it presents a claim regarding the grievant's compensation.

The agency in this case interpreted the budget bill "to exclude employees who have active written notices during the period from November 10, 2021 through November 10, 2022." Because the grievant's Written Notice remained active during that period,⁹ the agency determined she was ineligible for the bonus. There is evidence in the grievance record that other state agencies may have interpreted and applied the budget bill differently, such as only excluding employees from eligibility for the bonus who had *received* a disciplinary action during the relevant 12-month period. While EDR would agree that the budget bill is subject to more than one interpretation, we find nothing in the agency's application of the eligibility language to be inconsistent with the actual language of the budget bill¹⁰ or DHRM's guidance.¹¹

⁴ Va. Code § 2.2-3004(B).

⁵ *Id.* § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).

⁶ Va. Code § 2.2-3004(A); *see Grievance Procedure Manual* § 4.1(b).

⁷ *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)).

⁸ *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").

⁹ Group II Written Notices remain active for three years following issuance. DHRM Policy 1.60, *Standards of Conduct*, at 8. As the grievant received a Group II Written Notice on or about April 22, 2021, the disciplinary action was active between November 10, 2021 through November 10, 2022.

¹⁰ The relevant budget bill language provides: "Employees in the Executive Department subject to the Virginia Personnel Act shall receive the bonus payment authorized in this paragraph only if they have attained an equivalent rating of at least "Contributor" on their performance evaluation and have no active written notices under the Standards of Conduct within the preceding twelve-month period." 2022 Special Session I Va. Acts Ch. 2, Item 483.W.2.

¹¹ *See* DHRM FY23 Bonus Guidance and Instructions, *available* at <https://www.dhrm.virginia.gov/docs/default-source/compensationdocuments/fy23bonusguidance.pdf>.

Although the grievant's arguments are understandable, EDR cannot conclude that the grievance presents a sufficient question whether the agency has violated a mandatory policy provision, or whether its decision in this case amounts to a disregard of a particular policy's (or the budget's) intent. In light of the agency's "exclusive right" to manage its affairs and operations,¹² and the considerable discretion agencies are afforded in determining appropriate pay practices, we conclude that the grievance does not qualify for a hearing.

CONCLUSION

For the foregoing reasons, this grievance does not present issues that qualify for a hearing.¹³ EDR's qualification rulings are final and nonappealable.¹⁴

Christopher M. Grab
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¹² Va. Code § 2.2-3004(B).

¹³ EDR has fully reviewed and considered the grievance file in this case. While the grievance includes other points and assertions as to why the agency should have deemed the grievant eligible for the bonus, none of these presented a basis on which EDR can qualify the grievance for a hearing.

¹⁴ See Va. Code § 2.2-1202.1(5).