



JANET L. LAWSON
DIRECTOR

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

James Monroe Building
101 N. 14th Street, 12th Floor
Richmond, Virginia 23219
Tel: (804) 225-2131
(TTY) 711

RECONSIDERED QUALIFICATION RULING

In the matter of the Department of Motor Vehicles
Ruling Number 2022-5394
August 4, 2022

The grievant has requested that the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management reconsider its determination in EDR Ruling Numbers 2022-5326 and 2022-5372 (the “prior ruling”), which determined that the grievant’s September 14, 2021 and November 19, 2021 grievances were not qualified for a hearing.¹ For the reasons described below, EDR declines to reconsider the conclusions set forth in the prior ruling.

DISCUSSION

EDR does not generally reconsider its qualification rulings and will not do so without sufficient cause. For example, EDR may reconsider a ruling containing a mistake of fact, law, or policy where the party seeking reconsideration has no opportunity for appeal. However, clear and convincing evidence of such a mistake is necessary for reconsideration to be appropriate.²

In the prior ruling, EDR determined that the grievant had not raised a sufficient question in her grievances whether she experienced an adverse employment action – a threshold requirement for hearing qualification. Specifically, the prior ruling concluded that the record did not support any disciplinary action or hostile work environment as an adverse employment action. However, the ruling noted that any future adverse employment action that might relate to the grievant’s existing allegations could be addressed through a subsequent grievance.

In her request for reconsideration, the grievant objects that the prior ruling did not account for certain information that would constitute “additional proof” of the allegations in her grievances. She also argues that the prior ruling was “conflicting and confusing” in that some of its analysis was in her favor but the outcome was not. In addition, the grievant reiterates that her agency has singled her out for enforcement of conflicting policies, and/or is manipulating its policies in order to “build a case” against her, while ignoring policy violations by other employees.

¹ The grievant requested reconsideration of the prior ruling on March 28, 2022. To ensure the grievant had ample time to provide further documentation, EDR allowed the grievant until July 11, 2022 to submit information she wanted EDR to consider. All information submitted by the grievant was reviewed and considered.

² See, e.g., EDR Ruling Nos. 2010-2502, 2010-2553 n.1.

In support of her request, the grievant has submitted an exchange that occurred on May 16, 2022, wherein her supervisor inquired about a lengthy customer call in which the grievant allegedly told the customer she would send him her resume and then “masked” the call, apparently preventing management review. The grievant provided an explanation for the incident, and her supervisor advised her to try to control call length and to avoid masking unless required. The grievant has also submitted a written document, dated May 16, 2022, which appears to be her response to additional performance feedback from management. The response asserts that the grievant speaks clearly on customer calls, that management appears to apply different standards to the grievant as compared with other employees, that controlling call length can come across as “rude” to the customer, and that she has longer calls and lower call counts because she must frequently correct errors made by other employees.³ In addition, the grievant has submitted emails in which she sought clarity on how certain calls were routed to her; she claims her inquiries have not been answered. Finally, she submitted evidence that a new manager in her department reviewed her work on June 14, 2022.

As an initial matter, EDR declines to reconsider the prior ruling based on events that occurred after that ruling was issued. The grievance procedure requires that, in order to “challenge a new management action or omission occurring after the initiation of a grievance, an employee would need to file a new grievance.”⁴ Thus, issues arising not only after the initiation of a grievance, but after EDR has ruled that the grievance does not qualify for a hearing, are not proper grounds to revisit the qualification determination. As we stated in the prior ruling, its findings did not preclude the grievant from filing a new grievance if the non-qualifying allegations should give rise to a future adverse employment action. Nevertheless, the grievant’s reconsideration request indicated that there was additional information that the grievant had not provided to EDR or that EDR had not requested from the grievant that should have been considered in the prior ruling. In reviewing the information provided pursuant to the reconsideration request, EDR does not find that the grievant has submitted any such additional information that existed at the time of the prior ruling and was not considered in relation to the matters grieved in the 2021 grievances.

To the extent the grievant has presented new documentation to demonstrate the agency’s improper motives and/or a hostile work environment, EDR’s thorough review of all the evidence provides no basis to reconsider our prior conclusion that no adverse employment action was or is apparent. In the prior ruling, we stated:

EDR cannot conclude that the grievant’s disapproval of management’s efforts to enforce its priorities might constitute harassment or bullying under [DHRM] Policy 2.35. Although the record suggests that management does closely monitor the activity of its service agents, there is nothing to indicate that the agency applies this level of oversight for improper purposes.⁵

We also concluded that “the available evidence does not present a sufficient question whether employees similarly situated to the grievant have committed misconduct of the same nature but

³ The grievant has also submitted emails she sent to the agency’s human resources staff reporting similar disagreements with how her management evaluated her performance.

⁴ *Grievance Procedure Manual* § 2.4 n.6.

⁵ EDR Ruling Nos. 2022-5326, -5372, at 6.

did not receive due process memoranda,” as the grievant had received.⁶ EDR is unable to identify evidence that those determinations may have represented a mistake of fact, law, or policy.

The newly submitted documentation confirms that the grievant’s work performance is closely monitored and she sometimes receives performance feedback with which she strongly disagrees, as we recognized in the prior ruling. We are unable to identify any performance feedback that would constitute formal discipline or that could reasonably be perceived as hostile or abusive. Moreover, no evidence before EDR suggests that the agency manages the performance of similarly situated employees differently, or that the grievant has been singled out for scrutiny and criticism. Although the grievant asserts that other employees who make mistakes are not reprimanded, the grievant’s belief is not sufficient evidence of inconsistent treatment, as counseling or other performance management for specific employees is not normally disclosed to the employees’ peers. The grievant further argues that it is not consistent for the agency to criticize aspects of her performance while assigning her increased responsibilities. However, we perceive nothing suspect about a management practice to note both positive and negative aspects of an employee’s performance and respond accordingly. In sum, we cannot conclude that the grievant has presented sufficient cause for EDR to reconsider whether her grievances qualify for a hearing.

CONCLUSION

EDR has carefully considered the grievant’s request for reconsideration and concludes that there are no grounds to reconsider or change our analysis of the underlying issues. While the grievant appears to disagree with EDR’s assessment of the available evidence, she has not presented information to indicate that a mistake of fact, law, or policy led the prior ruling to an incorrect result as to qualification. For these reasons, the grievant’s request for reconsideration is denied, and the determinations made in EDR Ruling Numbers 2022-5326 and 2022-5372 stand as originally issued.

EDR’s qualification rulings are final and nonappealable.⁷

Christopher M. Grab
Director
Office of Employment Dispute Resolution

⁶ *Id.*

⁷ *See* Va. Code § 2.2-1202.1(5).