



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

QUALIFICATION RULING

In the matter of the Department of Medical Assistance Services
Ruling Number 2023-5462
December 20, 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 May 31, 2022 grievance with the Department of Medical Assistance Services (the “agency”) qualifies for a hearing. For the reasons discussed below, the grievance does not qualify for a hearing.

FACTS

On March 7, 2022, the grievant submitted an application for an open position within the agency. On May 18, 2022, the agency informed the grievant that she had not been selected for an interview because she did not meet the minimum qualifications for the position. On or about May 31, 2022, the grievant initiated a grievance challenging her non-selection and seeking additional information as to why the agency had not selected her for an interview.

During the grievance process, agency management determined that the grievant’s application did in fact reflect that she met the minimum position criteria, but, due to an oversight, she had nevertheless been excluded from the interview pool. The management step respondents apologized to the grievant for the oversight, but declined to grant her requested relief of changes to her job duties and salary to align with the position she had sought. The agency head declined to qualify the grievance for a hearing, and the grievant now appeals that determination to EDR.

DISCUSSION

By statute and under the grievance procedure, complaints relating solely to issues such as the hiring, promotion, transfer, assignment, and retention of employees within the agency “shall not proceed to a hearing” unless there is sufficient evidence of discrimination, retaliation, unwarranted discipline, or a misapplication or unfair application of policy.¹ For an allegation of misapplication of policy or unfair application of policy to qualify for a hearing, there must be facts that raise a sufficient question as to whether management violated a mandatory policy provision,

¹ Va. Code § 2.2-3004(C); see *Grievance Procedure Manual* §§ 4.1(b), (c).

or whether the challenged action, in its totality, was so unfair as to amount to a disregard of the intent of the applicable policy.

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve an “adverse employment action.”² 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, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.”³ Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one’s employment.⁴

Finally, qualification may not be appropriate even if a grievance challenges a management action that might ordinarily qualify for a hearing. For example, an issue may have become moot during the management resolution steps, either because the agency granted the specific relief requested by the grievant or an interim event prevents a hearing officer from being able to grant any meaningful relief. Additionally, qualification may be inappropriate when the hearing officer does not have the authority to grant the relief requested by the grievant and no other effectual relief is available.⁵

The issue presented by this grievance is whether the agency’s failure to interview the grievant for the position of Third-Party Liability Manager qualifies for a hearing. In general, state hiring policy is designed to ascertain which candidate is best suited for the position, not just to determine who might be qualified to perform the duties of the position.⁶ Moreover, the grievance procedure accords much deference to management’s exercise of judgment, including management’s assessment of applicants during a selection process. That said, DHRM Policy 2.10, *Hiring*, provides that agencies may screen applications to reduce the initial applicant pool for a position. If so, screening must proceed according to “the minimum qualifications established for the position” but may also include consideration of “appropriate preferred job-related qualifications,” provided the criteria are “applied consistently to all applicants.”⁷ Once screening is concluded, Policy 2.10 provides that “[a] set of interview questions must be developed and asked of each applicant” who is interviewed, that those “[q]uestions should seek information related to the applicant’s knowledge, skills, and ability to perform the job,” and that “[i]nterviewers must document applicants’ responses to questions to assist with their evaluation of each candidate’s qualifications.”⁸

In this case, the parties do not appear to dispute that the agency misapplied or unfairly applied policy by excluding the grievant from its interview pool for the position of Third-Party Liability Manager. We also assume, for purposes of this ruling, that the grievant has sufficiently

² *Grievance Procedure Manual* § 4.1(b).

³ *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)).

⁴ *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”).

⁵ *See, e.g.*, EDR Ruling No. 2017-4477; EDR Ruling No. 2017-4509.

⁶ *See* DHRM Policy No. 2.10, *Hiring*, at 22.

⁷ *Id.* at 9.

⁸ *Id.* at 11.

alleged an adverse employment action, as it appears the position she applied for would have been a promotion. However, the agency maintains that, despite its screening error, the candidate it ultimately selected through its recruitment process “was the most qualified and best suited for the role” even if the grievant had been interviewed. The grievant challenges this contention, pointing out her many qualifications for the position and her years of subject-matter experience. Thus, the relevant question for qualification purposes is whether sufficient evidence exists to demonstrate that the grievant’s non-selection was caused by the agency’s misapplication of policy, rather than the availability of a more suitable candidate. If the agency could reasonably have viewed its chosen candidate as best suited to be its Third-Party Liability Manager notwithstanding its misapplication of policy, then it is not apparent what effective relief the hearing officer would have authority to provide.

There is no dispute that the grievant was qualified for the position of Third-Party Liability Manager as described in the agency’s job posting. The posting listed the following minimum qualifications:

- Demonstrated knowledge of health insurance reimbursement policies and claims processing and code sets
- Demonstrated knowledge of cost saving and revenue activities related to health care benefit programs and payment methodologies
- Working knowledge of accounts receivable management
- Demonstrated ability to communicate both orally and in writing.
- Ability to analyze complex data, identify problems, recommend effective solutions and determine appropriate actions.
- Experience with contract development and management.
- Highly proficient using computer based tools

In addition, the posting listed the preferred qualifications of “[s]upervisory experience, preferably in a claims processing or accounts receivable/billing environment” and “[e]xpertise in Health Insurance and Coordination of Benefits for Medicaid, Medicare and Commercial Payers.” The listed qualifications appear to align with the core responsibilities outlined on the Employee Work Profile for the position: Performance Management (10 percent), Recovery and Research (35 percent), Quality Control (10 percent), Technical Design and Implementation (20 percent), Management of Third-Party Liability Contract (15 percent), and Processing Automated Scans (10 percent).

In this case, the grievant’s application reflected significant knowledge and experience regarding health insurance reimbursement policies, claims processing, payment, and contract monitoring and compliance. She noted several credentials earned in these areas during her career, training she provided to others, and specific job responsibilities for the agency that illustrated substantial experience working with various reimbursement programs and contracts and with managing compliance efforts. Nevertheless, the agency maintains that, even if the grievant had interviewed for the Third-Party Liability Manager position, the candidate ultimately selected would have been most suitable for the position due to his particular management and leadership experience. In support, the agency has provided evidence that the selected candidate had an advanced degree related to management, demonstrated experience in creating cost-saving opportunities and strategies, and developing the negotiated terms of the agency’s contracts with

third parties. In sum, the agency argues that it is unlikely that the grievant would have been offered this position over the selected candidate due to his higher-level management qualifications in the relevant fields.

Although EDR's review suggests that the grievant would have been a strong candidate for the position of Third-Party Liability Manager, the agency has offered a reasonable explanation as to why it viewed its selected candidate as better qualified. Agency decision-makers deserve appropriate deference in making determinations regarding a candidate's knowledge, skills, and abilities. As a result, EDR will not second-guess management's decisions regarding the administration of its procedures absent evidence that the agency's actions are plainly inconsistent with other similar decisions within the agency or otherwise arbitrary or capricious. Under the circumstances presented here, EDR can find nothing to indicate that the grievant was so clearly a better candidate that the agency's selection of another individual would not have been a reasonable exercise of discretion based on a good faith assessment of the candidates' suitability for the position. Upon our thorough review of the recruitment materials and candidate records, the agency's position appears to be a reasonable assessment of the respective candidates' qualifications and, as such, is ultimately within its hiring discretion under DHRM Policy 2.10. Although the grievant may disagree with this characterization of her relative experience, we cannot say that the grievance record supports a claim that would allow a hearing officer to find that the grievant should properly have been selected for the position, over the agency's chosen candidate.

Accordingly, although it appears that the agency's screening process may have failed to apply consistent criteria to all applicants as state policy requires, we cannot say that the grievance presents a claim that would be susceptible to relief via a grievance hearing. This ruling determines only that the grievance does not qualify for a hearing; it should not be read to foreclose the possibility for dispute resolution outside the context of a grievance hearing. Although the hearing officer would not have authority to order a remedy under the circumstances if the grievance were qualified for a hearing, we encourage the parties to continue discussions regarding opportunities for the grievant to expand her substantial expertise within the agency, as she sought to do by applying for the manager position at issue here.

EDR's qualification rulings are final and nonappealable.⁹

Christopher M. Grab
Director
Office of Employment Dispute Resolution

⁹ Va. Code § 2.2-1202.1(5).