

Issue: Qualification – Management Actions (recruitment/selection); Ruling Date: June 7, 2018; Ruling No. 2018-4730; Agency: Department of Juvenile Justice; Outcome: Not Qualified.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Equal Employment and Dispute Resolution

QUALIFICATION RULING

In the matter of the Department of Juvenile Justice
Ruling Number 2018-4730
June 7, 2018

The grievant has requested a ruling from the Office of Equal Employment and Dispute Resolution (“EEDR”) at the Department of Human Resource Management (“DHRM”) on whether his March 21, 2018 grievance with the Department of Juvenile Justice (the “agency”) qualifies for a hearing. For the reasons discussed below, the grievance does not qualify for a hearing.

FACTS

The grievant is employed at one of the agency’s facilities as a Resident Specialist I. He initiated his March 21, 2018 grievance to challenge the agency’s selection process for a position as a Resident Specialist II at his facility in which he participated unsuccessfully. According to the agency, sixty-six applicants, including the grievant, were interviewed by a selection panel to fill twelve Resident Specialist II positions. The agency has further represented that a total of twenty-five applicants, including the grievant, were recommended for hiring by the selection panel. As more candidates were recommended for hiring than there were available positions, the agency further evaluated the twenty-five finalist candidates based, in part, on the results of a background investigation and reference check. During this process, the agency noted concerns about the grievant’s work performance, specifically relating to his interactions with supervisors and/or management. Based on the information it discovered during the reference check, the agency did not select the grievant for one of the Resident Specialist II positions.

In his grievance, the grievant contends that the hiring process was “unfair” because he was “overlooked during interview[s]” and was “recommended for promotion” but not selected for one of the available Resident Specialist II positions. After proceeding through the management steps, the grievance was not qualified for a hearing by the agency head. The grievant now appeals that determination to EEDR.

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 Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve an “adverse employment action.”² 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.”³ Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one’s employment.⁴ For purposes of this ruling only, it will be assumed that the grievant has alleged an adverse employment action, in that it appears the position he applied for would have been a promotion.

In this case, the grievant essentially asserts that the agency did not comply with state hiring policy by not selecting him for one of the Resident Specialist II positions. 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, or whether the challenged action, in its totality, was so unfair as to amount to a disregard of the intent of the applicable policy. 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.⁵ Moreover, the grievance procedure accords much deference to management’s exercise of judgment, including management’s assessment of applicants during a selection process. Thus, a grievance that challenges an agency’s action like the selection in this case does not qualify for a hearing unless there is sufficient evidence that the resulting determination was plainly inconsistent with other similar decisions by the agency or that the assessment was otherwise arbitrary or capricious.⁶

In this case, the number of candidates, including the grievant, who were recommended for hiring by the selection panel exceeded the number of open Resident Specialist II positions. The agency conducted reference checks for the grievant and the other finalist candidates to determine who was most suitable for the available positions. As part of the grievant’s reference check, the agency learned that management at the grievant’s facility identified concerns with the grievant’s communication and interpersonal skills, particularly in interactions with management staff. Based on this information, the agency determined that the grievant was not one of those selected as best suited for the Resident Specialist II position.

DHRM Policy 2.10, *Hiring*, is designed to ascertain the candidate best suited for the position, not just to determine who might be qualified to perform the duties of the position. Agency decision-makers deserve appropriate deference in making determinations regarding a candidate’s knowledge, skills, and abilities. As a result, EEDR will not second-guess

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

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

³ *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

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

⁵ *See DHRM Policy No. 2.10, Hiring*.

⁶ *See Grievance Procedure Manual* § 9 (defining arbitrary or capricious as “[i]n disregard of the facts or without a reasoned basis.”).

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. Based on the information presented by the parties in this case, the agency's assessment of the grievant's suitability for the Resident Specialist II position, based on the outcome of his reference check, appears to be consistent with the discretion granted to the agency under DHRM Policy 2.10, *Hiring*.

Although the grievant may reasonably disagree with the agency's decision not to select him for one of the Resident Specialist II positions, EEDR has reviewed nothing that would suggest the agency's determination disregarded the pertinent facts or was otherwise arbitrary or capricious. Likewise, EEDR has reviewed no information to suggest that the grievant was not selected for an improper reason or that the agency failed to follow the provisions of DHRM Policy 2.10, *Hiring*, in evaluating the grievant's suitability for the position. It is clear that, in this case, the grievant and the other candidates who were recommended for hiring by the selection panel could all be considered qualified for the Resident Specialist II positions. However, there is no basis for EEDR to conclude that the agency's assessment of the candidates and subsequent selection decision were motivated by anything other than a good faith assessment of the candidates based on their performance at the interview, as well as a further evaluation of their suitability for the positions through background and reference checks. Accordingly, this grievance does not raise a sufficient question as to whether the agency misapplied and/or unfairly applied policy, and does not qualify for a hearing.

EEDR's qualification rulings are final and nonappealable.⁷



Christopher M. Grab
Director
Office of Equal Employment and Dispute Resolution

⁷ Va. Code § 2.2-1202.1(5).