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RECONSIDERED QUALIFICATION RULING

In the matter of the Department of Corrections
Ruling Number 2019-4908
April 18, 2019

The grievant has requested that the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management¹ reconsider its qualification determination in Ruling Number 2019-4857, which held that the grievant’s January 24, 2018 grievance does not qualify for a hearing.² For the reasons discussed below, EDR finds no error with the initial qualification determination.

The grievant’s January 24, 2018 grievance challenges the agency’s selection process for a position as a Corrections Lieutenant in which he participated unsuccessfully. In particular, the grievant alleges that the agency’s failure to select him for the position was discriminatory (based on his age and/or race), retaliatory (based on his reporting past complaints about selection processes), and did not comply with the requirements of the Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA”).³ In EDR Ruling Number 2019-4857, this Office determined that the grievance did not qualify for a hearing. The grievant has submitted a request for reconsideration, disputing EDR’s analysis and conclusions regarding his claims of discrimination and retaliation.

EDR does not generally reconsider its qualification rulings and will not do so without sufficient cause. For example, EDR might reconsider a ruling containing a mistake of fact, law, or policy where the party seeking reconsideration has no opportunity for appeal. However, there must be clear or convincing evidence of such a mistake for reconsideration to be appropriate.⁴

In support of his position, the grievant alleges that, because he had not yet made an allegation of discrimination or retaliation when the selection decision was made, “there was nothing that could be found in the panels [sic] deliberations which addressed these issues”

¹ The Office of Equal Employment and Dispute Resolution has separated into two office areas: the Office of Employment Dispute Resolution and the Office of Equity, Diversity, and Inclusion. While full updates have not yet been made to the *Grievance Procedure Manual* to reflect this change, this Office will be referred to as “EDR” in this ruling. EDR’s role with regard to the grievance procedure remains the same.

² See EDR Ruling No. 2019-4857.

³ 38 U.S.C. §§ 4301 *et seq.*

⁴ See EDR Ruling Nos. 2010-2502, 2010-2553 n.1.

In essence, the grievant appears to argue that the agency's stated nondiscriminatory and nonretaliatory reasons for the selection decision were pretextual, and thus the grievance should have been qualified for a hearing for further exploration of the facts surrounding these claims. Before issuing the original qualification ruling, EDR thoroughly reviewed the grievance record and considered the parties' arguments about these issues. Unless there is 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, a grievance challenging issues such as the ones presented in this case will not qualify for a hearing.⁵ EDR Ruling Number 2019-4857 found that there was insufficient evidence to raise a sufficient question as to any of the claims raised to qualify for a hearing. With regard to the issues of discrimination and retaliation specifically, EDR concluded that the agency had demonstrated legitimate, nondiscriminatory and nonretaliatory business reasons for its assessment of the candidates' suitability for the Corrections Lieutenant position, and that there was insufficient evidence to indicate that the agency's stated explanations were pretext for an improper motive.

In his request for reconsideration, the grievant has submitted nothing that would alter EDR's findings relating to his claims of discrimination and retaliation. EDR has carefully considered the grievant's request for reconsideration and concludes that there are no grounds to reconsider or change the analysis of these underlying issues. While the grievant may disagree with EDR's prior ruling, he has presented nothing in his request for reconsideration indicating that a mistake of fact, law, or policy led to an incorrect result.

For these reasons, the grievant's request for reconsideration is denied and the determinations made in EDR Ruling Number 2019-4857 stand as originally issued. EDR's rulings on matters of qualification are final and nonappealable.⁶



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

⁶ Va. Code § 2.2-1202.1(5).