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RECONSIDERED QUALIFICATION RULING

In the matter of the Department of Corrections
Ruling Number 2019-4923
May 10, 2019

The Department of Corrections (the “agency”) has requested that the Office of Employment Dispute Resolution (“EDR”)¹ at the Department of Human Resource Management (“DHRM”) reconsider Ruling Number 2019-4846 (“the prior ruling”), which determined that the grievant’s October 22, 2018 grievance partially qualifies for hearing. For the reasons described below, EDR declines to reconsider the ruling.

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.²

Religious Discrimination

The agency objects to EDR’s consideration of the grievant’s claim of religious discrimination primarily on the question of whether the grievant provided the agency with sufficient notice of his religious beliefs. The agency’s assertions in this regard are varied and EDR will attempt to address each point. For instance, the agency posits that it could not accommodate the grievant’s religious beliefs because it did not know the specifics of his religious beliefs or that the grievant wanted a religious accommodation at all. While there are reasonable questions about the specificity with which the religious objection was asserted, it cannot be claimed that the issue was not raised at all. The grievant’s assertion of a religious objection was clearly made in his grievance and, indeed, far earlier in correspondence to agency managers. The religious objection was part of the grievant’s efforts to seek an accommodation regarding the body scanner.

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 Nos. 2010-2502, 2010-2553 n.1.

The agency raises reasonable questions as to whether the grievant provided the agency with sufficient notice of his religious beliefs to establish a claim of religious discrimination. EDR addressed this point in the prior ruling, noting that it will be a proper factual question for the hearing officer to address.³ However, it is not a question that is resolvable at the qualification stage in such a way to deny the grievant a hearing on this claim. The agency is free to assert its position as to what the grievant was required to present and what actions the agency took to address the grievant's assertion of a religious objection. For instance, the hearing officer will presumably want to consider what the agency did when presented with the religious objection. What questions were asked? What was the grievant's response? Was the claim ignored by either party? Did the grievant understand what the agency needed from him to assess his claim? Was this information provided to the grievant? Were appropriate steps taken to ensure the grievant's rights were properly considered? These are all factual questions that were considered by EDR in determining that there was a sufficient question raised as to this element of the grievant's religious discrimination claim. EDR has by no means determined that this element of the claim is established, only that there is a sufficient question to qualify for a hearing.

The above factors were considered in reaching EDR's determination in the prior ruling. The additional information provided by the grievant to EDR, describing his religious beliefs in detail, was not a basis used to determine whether the grievant provided sufficient notice of his claim. Rather, this information was used to assess whether the grievance raised a sufficient question as to a bona fide religious belief.⁴ The agency expresses consternation with EDR's consideration of this information in that it was not known to the agency and is not summarized in the ruling. While it is true that the details of the grievant's religious beliefs were not listed in the ruling, it is inaccurate to state that the agency was not made aware that the grievant had provided this information to EDR. This information will be provided to the agency again upon request.

Lastly, the agency contends that EDR made inconsistent findings between the grievant's claims under the Americans with Disabilities Act ("ADA") and his religious discrimination claim. While EDR acknowledges the agency's argument in this regard, each claim was approached according to the differing facts presented. The record on the ADA claim showed that the agency had provided the grievant with forms and requests for clarification as part of the required interactive process.⁵ When that process was effectively concluded by the grievant, ADA guidance cited in the prior ruling is fairly clear with how such a claim is resolved, which led to EDR's determination that the claim did not qualify for a hearing.⁶ The record as to the grievant's religious discrimination claim is not as clear and presented factual questions, as described above, that were not resolvable at this stage. For example, if it is reasonable to apply similar concepts of an interactive process to the grievant's assertion of a religious objection, there are sufficient factual questions as to whether the process was handled appropriately.

While the agency asserts reasonable factual questions of its own in its request for reconsideration, there still remain sufficient questions raised as to the grievant's claim of religious discrimination to qualify for a hearing. As such, the agency's request for reconsideration is denied. Further, as has been stated, EDR's ruling does not determine that the

³ EDR Ruling No. 2019-4846.

⁴ *Id.*

⁵ *Id.*

⁶ *See id.*

agency has improperly denied the grievant a religious accommodation. The prior ruling only determines that there are sufficient factual questions that warrant consideration by a hearing officer.

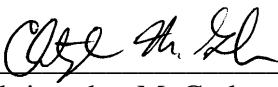
Grievant's Separation from Employment

The agency asserts that there is insufficient evidence linking the grievant's separation on long-term disability and his religious and privacy complaints about the body scanner. While this is a question susceptible to reasonable argument at hearing, in EDR's assessment, the grievance raises a sufficient question on this issue for the matter to be qualified for a hearing. The doctor's notes in the grievance record demonstrate a link between the grievant's anxiety and his concerns over proceeding through the body scanner. To find that there is no adverse employment action at issue in this case involving an employee who was separated from employment, EDR would need to find that the body scanner matter and the grievant's separation were unrelated. The grievance record does not permit EDR to make such a determination. The agency's request for reconsideration presents insufficient grounds for EDR to change its underlying analysis of this matter in the prior ruling.⁷

Conclusion

EDR has carefully considered the agency's request for reconsideration and concludes that there are no grounds to reconsider or change the analysis of these underlying issues. While the agency presents reasonable disagreements with EDR's assessment of the facts, there has been nothing presented 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 2019-4846 stand as originally issued.

EDR's rulings on matters of qualification are final and nonappealable.⁸ The agency is directed to provide a completed Form B within five workdays of this ruling.



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⁷ As noted in the prior ruling, EDR also took into account that as a result of the body scanner issue, the grievant was effectively barred from proceeding to his workplace. *See* EDR Ruling No. 2019-4846. EDR would additionally consider preventing an employee from getting to work (if the reasons for the denial are inappropriate) as raising a sufficient question as to an adverse employment action.

⁸ Va. Code § 2.2-1202.1(5).