

Issue: Qualification – Compensation (position classification); Ruling Date: August 13, 2018; Ruling No. 2018-4711; Agency: Department of Social Services; 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 Social Services
Ruling Number 2018-4711
August 13, 2018

The grievant has requested a ruling from the Office of Equal Employment and Dispute Resolution (“EEDR”) at the Department of Human Resource Management on whether his grievance with the Department of Social Services (the “agency”) qualifies for a hearing. For the reasons discussed below, the grievance is not qualified for a hearing.

FACTS

In 2015, the grievant was hired by the agency as a Human Resource Analyst II, a Pay Band 5 position. In 2016, the agency began an internal reorganization of several work units into a combined Organizational Development Division, which impacted the grievant. As a result of the reorganization, the grievant was notified that he would be reclassified into a Human Resource Analyst I position in Pay Band 4 effective November 25, 2017, with a working title of HR Operations Specialist. The grievant’s salary and other benefits were not impacted by his reclassification into the Human Resource Analyst I position.

The grievant initiated a grievance on October 18, 2017, challenging the agency’s decision to reclassify him into a Human Resource Analyst I position and alleging that he was treated differently than other similarly situated employees.¹ 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

Although state employees with access to the grievance procedure may generally grieve anything related to their employment, only certain grievances qualify for a hearing.²

¹ In his request for a qualification ruling from EEDR, the grievant also appears to allege that the agency did not provide him with requested documentation about his reclassification that he sought through the Virginia Freedom of Information Act (“FOIA”). Section 8.2 of the *Grievance Procedure Manual* states that, “[o]nce a grievance has been initiated, an employee’s request for documents relating to his/her grievance, pursuant to [FOIA], shall also be treated by the agency as a request for documents under the grievance procedure.” In this case, it appears the grievant’s FOIA request predated the initiation of the grievance, and thus the document disclosure provisions of the grievance procedure would not apply. To the extent there is any dispute as to whether the agency’s production of documents in response to the grievant’s request was consistent with FOIA, EEDR has no authority to enforce the provisions of FOIA. A person denied the rights and privileges conferred by FOIA must seek enforcement of FOIA’s provisions in a court of appropriate jurisdiction. *See* Va. Code § 2.2-3713. Moreover, even if the grievant’s request for information were considered under the document disclosure provisions of the grievance procedure, EEDR finds that any alleged issue of noncompliance is now moot, as the grievance does not qualify for a hearing for the reasons discussed below.

² *See Grievance Procedure Manual* § 4.1.

Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.³ Thus, claims relating to issues such as to the establishment or revision of wages, salaries, position classifications, or general benefits do not qualify for a hearing, unless the grievant presents evidence raising a sufficient question as to whether discrimination, retaliation, or discipline may have improperly influenced management's decision, or whether state or agency policy may have been misapplied or unfairly applied.⁴

EEDR has further recognized that, even if a grievance challenges a management action that might qualify for a hearing, there are some cases where qualification is inappropriate. For example, during the resolution steps, an issue may have become moot, 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.

While this ruling was pending with EEDR, the agency restored the grievant to a Human Resource Analyst II position in Pay Band 5, with a working title of Recruiter.⁵ At a hearing on this matter, a hearing officer would have the authority to "order the agency to reapply the policy from the point at which it became tainted," or, if "written policy require[d] a particular result without the exercise of agency discretion," the hearing officer could "order the agency to implement those particular policy mandates."⁶ In this case, then, the potential relief available to the grievant would be an order that the agency must either reapply policy correctly in assessing whether it was appropriate to reclassify the grievant into a position in a lower Pay Band, or restore the grievant to his former Human Resource Analyst II position in Pay Band 5. As the agency has reversed its reclassification decision with regard to the grievant, a hearing officer would be unable to provide him with any additional relief beyond that which has already been granted by the agency. EEDR does not generally grant qualification for a grievance hearing to determine whether an agency properly applied state and/or agency policy where, as here, the agency has cured the alleged error. This grievance is, therefore, not qualified for a hearing and will not proceed further.⁷

EEDR's qualification rulings are final and nonappealable.⁸



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

³ Va. Code § 2.2-3004(B).

⁴ *Id.* § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).

⁵ It is unclear whether, or to what extent, the grievant is currently performing different job duties now than he did prior to the reorganization. In general, however, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government, including the methods, means and personnel by which work activities are to be carried out. Va. Code § 2.2-3004(B).

⁶ *Rules for Conducting Grievance Hearings* § VI(C)(1).

⁷ This ruling does not mean that EEDR deems the management actions challenged by grievant, if they occurred as he alleged, to be appropriate, only that the grievance does not qualify for a hearing as the grievance procedure is unable to provide the grievant with any further relief.

⁸ Va. Code § 2.2-1202.1(5).