

Issue: Qualification – Management Actions (recruitment/selection); Ruling Date: July 26, 2018; Ruling No. 2019-4754; Agency: Department of Corrections; 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 Corrections
Ruling Number 2019-4754
July 26, 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 April 23, 2018 grievance with the Department of Corrections (the “agency”) qualifies for a hearing. For the reasons discussed below, this grievance does not qualify for hearing.

FACTS

The grievant is employed as a Carpenter Supervisor at one of the agency’s facilities. On or about March 22, 2018, he applied for a position as a Buildings and Grounds Supervisor at a different facility. The grievant was subsequently notified that he had not been selected to receive an interview for the position. The grievant filed a grievance on or about April 23, 2018, challenging his non-selection for the Buildings and Grounds Supervisor position. After proceeding through the management resolution steps, the grievance was not qualified for a hearing by the agency head. The grievant now appeals that decision 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 “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, EEDR will assume that the grievant’s non-selection for the Buildings and Grounds Supervisor position constituted an adverse employment action.

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).

In this case, the grievant essentially asserts that the agency misapplied and/or unfairly applied policy when it did not select him to receive an interview for the Buildings and Grounds Supervisor position. 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 Further, it is the Commonwealth's policy that hiring and promotions be competitive and based on merit and fitness.⁶

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 decision at issue 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.⁷ Here, the grievant argues that he satisfied the minimum qualifications for the Buildings and Grounds Supervisor position due to his "27 plus years [of] experience" as an agency employee and was improperly screened out of the applicant pool based on the screening criteria used by the agency, with the result that he should have been offered an interview for the position. The grievant also appears to contend that the agency should have investigated his employment history and/or contacted the references listed on his application when determining whether he was qualified for and/or should have received an interview for the position.

The initial screening of candidates for the Buildings and Grounds Supervisor position was conducted by an agency employee. The screener scored the candidates' applications using the criteria listed by the agency in the position advertisement and identified three candidates (out of 22 total) who satisfied all nine of the minimum qualification for the position. The screener determined that the grievant met eight of the minimum qualifications, and as a result he was not selected for an interview. The grievant argues that he should have received credit for the ninth minimum qualification, "[k]nowledge of related governmental codes and standards relating to general maintenance," due to his work experience with the agency. The grievant appears to further contend that he should have been offered an interview based on his work experience with the agency alone.

⁵ See DHRM Policy No. 2.10, *Hiring*; Department of Corrections Operating Procedure ("OP") 102.2, *Recruitment, Selection, and Appointment*, § IV(A)(1) (stating that the agency "makes employment decisions based on an individual's merits, qualifications, eligibility, and *suitability*" for the position (emphasis added)).

⁶ Va. Code § 2.2-2901 ("In accordance with the provision of this chapter all appointments and promotions to and tenure in positions in the service of the Commonwealth *shall be* based upon merit and fitness, to be ascertained, as far as possible, by the competitive rating of qualifications by the respective appointing authorities." (emphasis added)).

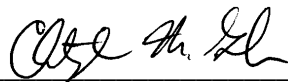
⁷ See *Grievance Procedure Manual* § 9 (arbitrary or capricious is defined as a decision made "[i]n disregard of the facts or without a reasoned basis)."

EEDR has reviewed the grievant's application materials and finds no evidence to support a claim that he should have received a higher score during the applicant screening process.⁸ The agency's recruitment policy provides that, "[f]or screening purposes, the application is the sole instrument used to assess education and experience qualifications."⁹ As a result, there was no error with the screener's use of the grievant's application alone to determine whether he should be offered an interview for the Buildings and Grounds Supervisor position. Moreover, while the grievant's experience and/or length of employment with the agency could support a conclusion that he possessed "[k]nowledge of related governmental codes and standards relating to general maintenance," his application does not directly indicate as such. Based upon a review of the documentation provided by the parties, EEDR cannot conclude that the agency's assessment of the grievant's application for the position was without a reasoned basis.

However, even had the grievant received an additional point during the applicant screening process and been offered an interview, there is little evidence that, having passed this hurdle, he would then have been selected for the Buildings and Grounds Supervisor position. EEDR has not reviewed any evidence that the agency would ultimately have found this particular grievant to have been the best-suited applicant for the position, compared to the three candidates who did advance to the interview stage. Instead, EEDR has reviewed nothing to suggest that the interviewers' assessment of the candidates and subsequent selection decision was motivated by anything other than a good faith assessment of the candidates' qualifications and suitability for the position. Thus, any error in the applicant screening process as it relates to the grievant, if it actually occurred, must be viewed as harmless.

In summary, and although the grievant may disagree with the agency's decision not to offer him an interview for the Buildings and Grounds Supervisor position, EEDR has reviewed nothing that would suggest the agency's selection process, as a whole, violated any mandatory policy, disregarded the intent of policy, or was otherwise arbitrary or capricious. The grievant has not identified any policy violated by the agency's manner of scoring applications for the Buildings and Grounds Supervisor position, and the agency's actions appear to fall within the discretion granted under state hiring policy.¹⁰ Agency decision-makers deserve appropriate deference in making such determinations. Accordingly, the 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.¹¹



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⁸ Indeed, an agency manager reviewed the grievant's application after he was initially notified of his non-selection for the position, determined that the screener had properly scored the grievant's application, and concurred with the screener's decision that he should not receive an interview.

⁹ Department of Corrections OP 102.2, *Recruitment, Selection, and Appointment*, § IV(F)(4).

¹⁰ See DHRM Policy 2.10, *Hiring*.

¹¹ Va. Code § 2.2-1202.1(5).