Issue: Reconsidered Qualification – Discrimination (other);   Ruling Date: December 11, 2017;   Ruling No. 2018-4653;   Agency: Virginia Employment Commission; Outcome: Not Qualified.

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

RECONSIDERED QUALIFICATION RULING

In the matter of the Virginia Employment Commission
Ruling Number 2018-4653
December 11, 2017

The grievant has requested that the Office of Equal Employment and Dispute Resolution ("EEDR") at the Department of Human Resource Management ("DHRM") reconsider its qualification determination in Ruling Number 2018-4638, which held that the grievant's September 18, 2017 grievance does not qualify for a hearing.[1] For the reasons discussed below, EEDR finds no error with the initial qualification determination.

The grievant's September 18, 2017 grievance concerns her overall rating of "Below Contributor" on her 2016-2017 performance evaluation, which she alleges was arbitrary and capricious, discriminatory, and retaliatory. In EEDR Ruling Number 2018-4638, this Office determined that the grievance did not qualify for a hearing. The grievant has submitted a request for reconsideration, disputing EEDR's analysis and conclusions regarding the issue of discrimination and arguing that the agency has not complied with the provisions of DHRM Policy 2.05, *Equal Employment Opportunity*.

EEDR does not generally reconsider its qualification rulings and will not do so without sufficient cause. For example, EEDR 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]

To the extent that the grievant argues that her challenge to the performance evaluation should have qualified for a hearing, EEDR considered her arguments about her work performance during the evaluation cycle, as well as her allegations that the evaluation was discriminatory and retaliatory. Unless the employee presents 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.[3] EEDR Ruling Number 2018-4638 found that the grievant had not presented such evidence. With regard to the issue of discrimination specifically, EEDR concluded that the agency had demonstrated legitimate, nondiscriminatory business reasons its assessment of her

---

[1] *See* EEDR Ruling No. 2018-4638.
[2] *See* EDR Ruling Nos. 2010-2502, 2010-2553 n.1.
[3] Va. Code § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).

performance as it was described in the evaluation, and that there was insufficient evidence to indicate that the agency's stated explanation was pretext for an improper motive.

In her request for reconsideration, the grievant has submitted nothing that would alter EEDR's findings relating to her claim of discrimination. EEDR has carefully reviewed the additional information provided by the grievant and concludes that there are no grounds to reconsider or change the analysis of the underlying issue. While the grievant may disagree with EEDR's prior ruling, she has presented nothing in her request for reconsideration indicating that a mistake of fact, law, or policy led to an incorrect result. As such, her September 18, 2017 grievance does not qualify for a hearing.

The grievant's request for reconsideration is denied and the grievance remains closed. EEDR's rulings on matters of qualification are final and nonappealable.[4]

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

---

[4] Va. Code § 2.2-1202.1(5).