

Issue: Qualification – Compensation (salary dispute); Ruling Date: October 5, 2018;  
Ruling No. 2019-4779; Agency: Department of Motor Vehicles; 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 Department of Motor Vehicles  
Ruling Number 2019-4779  
October 5, 2018

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 2019-4759, which held that the grievant’s April 5, 2018 grievance does not qualify for a hearing.<sup>1</sup> For the reasons discussed below, EEDR finds no error with the initial qualification determination.

The grievant’s April 5, 2018 grievance concerns his allegation that the Department of Motor Vehicles (the “agency”) misapplied and/or unfairly applied policy by determining that he was not eligible for a 3% shift pay supplement that some agency employees receive. In EEDR Ruling Number 2019-4759, this Office determined that the grievance did not qualify for a hearing. The grievant has submitted a request for reconsideration in which he disputes EEDR’s analysis and conclusions regarding the agency’s implementation of the shift pay supplement, and essentially contends that EEDR “did not review the information that [he] supplied concerning [his] issues but instead relied only on information supplied by” the agency.<sup>2</sup>

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.<sup>3</sup>

Before issuing the original qualification ruling, EEDR thoroughly reviewed the grievance record and considered the parties’ arguments about the nature of the grievant’s job duties, including the grievant’s contention that he received a shift pay supplement prior to 2011. Unless an 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 an issue such

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<sup>1</sup> See EEDR Ruling No. 2019-4759.

<sup>2</sup> The grievant further asserts that he learned of another agency employee who “had also filed a grievance over the same matter” due to an issue with correspondence from EEDR. Due to a clerical error, it appears that a letter sent by EEDR to another employee inadvertently included the grievant’s last name. While the grievant’s concern about this mistake is understandable, EEDR has not reviewed anything to suggest that it impacted the outcome of the qualification ruling for his grievance.

<sup>3</sup> See EDR Ruling Nos. 2010-2502, 2010-2553 n.1.

as the one presented in this case will not qualify for a hearing.<sup>4</sup> In EEDR Ruling Number 2019-4759, this Office found that the grievant had not presented such evidence. With regard to the issue of a misapplication or unfair application of policy specifically, EEDR concluded that the agency's implementation of the shift pay supplement did not violate any mandatory policy provision and that the grievant had not been treated differently than other similarly situated employees.

In support of his request for reconsideration, the grievant has presented many of the same documents that EEDR reviewed as part of its original qualification ruling. In addition, the grievant submitted a letter from a former agency manager stating that he believes the grievant should have received the supplement when it was reinstated in 2011, as well as Employee Work Profiles ("EWPs") for himself and a station manager that the grievant argues demonstrate he performs work similar to employees who are eligible for the supplement. Although the grievant may have received a shift pay supplement in the past, this alone does not support a conclusion that he must be deemed eligible for the current supplement. It was within the agency's discretion to set eligibility criteria for such actions and communicate that information to employees, as happened here.<sup>5</sup> Moreover, the information in the grievance record indicates that two other managers at the same level as the grievant also do not receive the supplement.

In addition, the station manager EWP provided by the grievant explicitly states that employees in that position are expected to "act as a technician in order to maintain designated schedule [sic] and keep the operation running to capacity," and serve as a "[w]orking manager [who] will rotate on the schedule as needed . . . ." The grievant's EWP, on the other hand, contains no language specifically stating that he is responsible for "rotat[ing] on the schedule . . . to maintain the full operation of the facility." While the agency has acknowledged that the grievant may, on occasion, perform work tasks outside of normal business hours, EEDR noted in its original qualification ruling that this was not necessarily an unreasonable expectation for an employee at the grievant's level of authority.

It is clear that the grievant disputes the agency's implementation of the shift pay supplement. This Office has not, however, reviewed anything that would alter its findings as stated in the original qualification ruling. Management is granted broad discretion in making such difficult determinations regarding employee compensation. EEDR has carefully considered the additional information provided by the grievant and concludes that there are no grounds to reconsider or change the analysis of the underlying issue.<sup>6</sup> While the grievant may disagree with EEDR's prior ruling, he has presented nothing in his request for reconsideration indicating that a

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<sup>4</sup> Va. Code § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).

<sup>5</sup> See DHRM Policy 3.05, *Compensation*.

<sup>6</sup> In addition to his arguments relating to EEDR's analysis of the issues, the grievant asserts that an agency employee who formerly worked at EEDR was not impartial and "should have recused himself" from matters relating to his grievance. EEDR did not contact the individual identified by the grievant in connection with this case, and it appears that all of the information in the grievance record was either authored by, or submitted to EEDR by, other agency employees.

mistake of fact, law, or policy led to an incorrect result. As such, his April 5, 2018 grievance does not qualify for a hearing.<sup>7</sup>

The grievant's request for reconsideration is denied and the grievance remains closed. EEDR's rulings on matters of qualification are final and nonappealable.<sup>8</sup>



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<sup>7</sup> In his request for reconsideration, the grievant appears to argue that he also believes the agency's actions were discriminatory. Grievances that may be qualified for a hearing include actions that occurred due to discrimination on the grounds of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, genetics, disability, or veteran status. *See, e.g.*, Executive Order 1, *Equal Opportunity* (2014); DHRM Policy 2.05, *Equal Employment Opportunity*. A grievance must present more than a mere allegation of discrimination – there must be facts that raise a sufficient question as to whether the actions described within the grievance were the result of prohibited discrimination based on a protected status. Here, the grievant has not specified any protected status on which the agency's allegedly discriminatory actions may have been based, and EEDR has identified nothing to demonstrate that the agency's implementation of the shift pay supplement had a discriminatory motive.

<sup>8</sup> Va. Code § 2.2-1202.1(5).