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QUALIFICATION RULING

In the matter of Longwood University
Ruling Number 2022-5305
October 21, 2021

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Virginia Department of Human Resource Management (“DHRM”) on whether her grievance dated June 21, 2021 with Longwood University (the “university” or the “agency”) qualifies for a hearing. For the reasons discussed below, the grievance is not qualified for a hearing.

FACTS

Prior to the events of this grievance, the grievant worked as an administrative assistant in the university’s police department. The department hired a new chief of police in approximately May 2020. Beginning in February 2021, the grievant alleges that she began to experience “tension” in the work environment when the chief began treating her differently than other employees. In particular, the grievant claims that the chief continued to interact casually with other employees but ignored the grievant. The grievant states that, in a series of conversations during February and March 2021, the chief told the grievant that she might be laid off and encouraged her to apply for jobs with other employers. In one of these conversations, the chief also discussed a project the grievant worked on with another manager, about which the manager reported dissatisfaction with the grievant’s work.

The grievant later began sick leave for an approved absence. On May 10, 2021, while the grievant was on leave, she received notice by telephone that her position was being eliminated effective May 25. Management identified two reasons for the grievant’s layoff: budget concerns and a lack of work for the grievant’s position due to the business needs of the police department. The university mailed the layoff forms and other information to the grievant’s home address. She signed and returned the necessary documents. The grievant entered leave without pay-layoff status on May 25.

The grievant filed an expedited grievance with the university on or about June 21, 2021 to challenge her layoff.¹ The grievant further argues that the chief of police engaged in “intimidation” and “discrimination” that created a hostile work environment. As relief, the grievant requested

¹ EDR previously addressed whether the grievance was timely filed in EDR Ruling Number 2022-5288.

credit for the “years of service needed for full state retirement.” Following the management resolution steps, the university president declined to qualify the grievance for a hearing. The grievant now appeals that determination to EDR.

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 Additionally, by statute and under the grievance procedure, management is reserved the exclusive right to manage the affairs and operations of state government.³ Thus, claims relating to issues such as the methods, means, and personnel by which work activities are to be carried out, as well as layoff, position classifications, 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.⁴

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve “adverse employment actions.”⁵ Thus, typically, the 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.”⁶ Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one’s employment.⁷ In this case, the grievant has experienced an adverse employment action because she was laid off.

Misapplication/Unfair Application of Policy

The grievant essentially claims that the agency has not complied with the provisions of DHRM Policy 1.30, *Layoff*. Specifically, she argues that the university’s stated explanations for abolishing her position are inaccurate and that the police chief’s personal dislike of her was the true motivation for her layoff. The grievant also takes issue with being laid off while she was on sick leave, arguing that management did not adequately explain the layoff process to her by phone; the grievant alleges that, as a result, she was unable to take advantage of preferential hiring options before her layoff became effective. Finally, the grievant contends that the university should have offered her recall to a position with the police department that became vacant after her layoff was effective, and that it convinced another administrative employee not to resign in order to avoid recalling the grievant to their position.

² *Grievance Procedure Manual* §§ 4.1(a), (b).

³ See Va. Code § 2.2-3004(B).

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

⁵ See *Grievance Procedure Manual* § 4.1(b).

⁶ *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

⁷ *Holland v. Washington Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007) (citation omitted).

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. The grievance procedure accords much deference to management's exercise of judgment, including decisions as to what work units will be affected by layoff and the business functions to be eliminated or reassigned and the degree of change, if any, in the job duties of a position. While agencies are afforded great flexibility in making decisions such as those at issue here, agency discretion is not without limitation. Rather, EDR has repeatedly held that even where an agency has significant discretion to make decisions (for example, an agency's assessment of a position's job duties or the need for organizational restructuring), qualification is warranted where evidence presented by the grievant raises a sufficient question as to whether the agency's determination was plainly inconsistent with other similar decisions within the agency or otherwise arbitrary or capricious.⁸

Business justification for layoff

The grievant primarily argues that the university's stated explanations for the layoff are insufficient to support the abolishment of her former position. The grievant has identified a number of reasons why she believes this to be the case, ranging from concerns about the motivation for the layoff to issues with the university's approval of salary increases for some employees after she was laid off and the selection of her position for abolishment instead of other positions. The intent of DHRM Policy 1.30 is to "ensure non-discriminatory implementation of reductions in the workforce that result in the elimination or reduction of positions and employee layoffs," which "may occur when work functions are eliminated, reduced, or reassigned to meet budgetary or other business needs."⁹ In determining how to implement a layoff, agencies "should assess and document the business need to reduce the number of employees or to reconfigure the work . . . consistent with their business needs and the provisions of [Policy 1.30]."¹⁰

The grievant first claims that the police chief's conduct prior to her layoff made her feel "railroaded" and "blackballed," suggesting an improper motive for the decision to abolish her position. The grievant appears to allege that the chief's actions were based on his displeasure that she reported a concern about a Facebook post made by an employee of a nearby locality in August 2020, which led to that employee's termination and to an employee of a second locality being disciplined. The information provided by the grievant does not describe when she reported the Facebook post, or to whom she reported this issue; however, the grievant acknowledges that the chief never spoke to her about it directly. She instead alleges that another department employee told her the chief was unhappy with the grievant's actions. It appears that, after she reported the Facebook post, the grievant began experiencing "tension" with the chief because she believed he was treating her differently than other employees. The grievant specifically claims that the chief "would not speak to [her] nor acknowledge [her] presence in the office." The grievant argues that

⁸ See *Grievance Procedure Manual* § 9 (defining arbitrary or capricious as "[i]n disregard of the facts or without a reasoned basis"); see also, e.g., EDR Ruling 2010-2365; EDR Ruling No. 2008-1879.

⁹ DHRM Policy 1.30, *Layoff*, at 1.

¹⁰ *Id.* at 2.

the university relied on its explanation of budget issues and reduced need for her job duties as an excuse to lay her off and make the decision appear legitimate.

Though the grievant's concern about these matters is understandable, the university has articulated a business-related explanation for the layoff, citing budgetary issues and a reduced need for the primary job duties assigned to the grievant's position. First, the university states that budget concerns led to a university-wide review of whether any positions should be eliminated for cost savings. Second, the university explains that it determined the grievant's job functions at the time of the layoff could either be eliminated or assigned to other employees due to changing business needs within the police department. The grievant's Employee Work Profile indicates that she was responsible for working at the department's front desk (40%), providing administrative support to a lieutenant (25%), serving as the liaison with a locality communications center (15%), and assisting an emergency operations coordinator (20%). According to the university, the need for liaison duties and administrative support for both the lieutenant and emergency operations coordinator were no longer necessary. Liaison duties were formerly a larger portion of the grievant's job responsibilities, but the need for this type of work diminished over time until it could be eliminated. Similarly, the university has explained that both the lieutenant and the emergency operations coordinator were able to perform necessary administrative tasks themselves. Consequently, the university argues that the bulk of the grievant's job duties consisted of working at the department's front desk. As a part of its review of positions for potential cost savings, the university determined that other employees could assume this responsibility in addition to their existing duties.

The grievant may have identified legitimate potential concerns about her working relationship with the police chief. However, we have not reviewed evidence to demonstrate that a causal connection between any alleged dissatisfaction with the grievant's actions or work performance caused the tension and the change in treatment that she has described. More importantly, the university appears to have conducted a review of the grievant's work functions consistent with DHRM Policy 1.30 and determined that those tasks could either be eliminated or reassigned to other employees consistent with its discretion under the policy. Accordingly, we find that the evidence presented by the grievant is insufficient to support a conclusion that her position was abolished because of personal animosity or some other improper motive, rather than a reasoned consideration of business needs at the university.

In addition, the grievant argues that employees in the police department received salary increases shortly after she was laid off. The university adjusted salaries for law enforcement employees after the grievant's layoff to address recruitment and retention concerns in those roles. At approximately the same time, the emergency operations coordinator received a salary increase after obtaining an advanced degree. According to the university, there was no across-the-board pay increase for all department employees; indeed, the university has indicated administrative positions were not included in the salary increase. EDR is unaware of any provision in DHRM Policy 1.30 that limits an agency's discretion to abolish some positions while adjusting or increasing funding for other positions, so long as that exercise of discretion is consistent with other similar decisions and is not otherwise arbitrary or capricious. The grievant disagrees with the

university's prioritization of salary increases for law enforcement employees instead of retaining her position, but the university has articulated legitimate business reasons for that choice.

The grievant also asserts that other employees who were less senior to her or had less developed positions should have been laid off instead of her. More specifically, the grievant argues that the university should have laid off either another administrative assistant with fewer years of service or a security officer whose job was less developed than the grievant's. The university has explained that it reviewed the job functions of employees whose positions were considered for abolishment and determined that the grievant's position was responsible for duties that could be either eliminated or reassigned. Pursuant to DHRM Policy 1.30, "[a]fter identifying the work that is no longer needed or that must be reassigned, agencies must identify employees for layoff within the same work unit, geographic area, and Role, who are performing substantially the same work" to be laid off in a defined sequence.¹¹ The policy lists "indicators to assist agencies" in determining whether employees are performing substantially the same work, including whether they "have similar job duties, KSAs, and other job requirements," "are in the same work unit" and Role, "have the same work title," and "are at the same reporting level in the organizational structure."¹²

Here, the university determined that no other employees in the police department were performing substantially the same work as the grievant. The department's other administrative assistant was responsible for supporting the chief of police and, as a result, had duties that were different from the grievant's: in particular, reviewing video footage, managing the department's budget for video cameras, reviewing security camera contracts, and serving as the department's budget and procurement manager. Likewise, the security officer was in a different Role from the grievant; that position's responsibilities included writing parking tickets and assisting officers on calls. When not working outside of the office, the security officer occupied the front desk area where the grievant worked. In contrast, the grievant's job responsibilities consisted of liaison duties that the university found were no longer necessary, administrative support tasks that could be taken on by the management, and occupying the front desk, which was reassigned to other employees (including the security officer). EDR has not reviewed evidence to suggest that the university improperly assessed the grievant's job tasks as compared to other employees when determining which position was most suitable for abolishment in accordance with the layoff sequence described in DHRM Policy 1.30. It appears instead that the agency appropriately exercised its discretion to review and reallocate job responsibilities consistent with Policy 1.30.

EDR has thoroughly reviewed the grievance record and the information provided by the parties. Upon careful consideration of the grievant's allegations about the motivation for her layoff, the decision to select her position for abolishment instead of other positions, and the approval of salary increases for some employees after she was laid off, we find that she has not presented evidence that raises a sufficient question whether the agency misapplied or unfairly applied DHRM Policy 1.30.¹³

¹¹ *Id.* at 3.

¹² *Id.*

¹³ Although the grievant has not made any specific claims about placement opportunities prior to her layoff, the university confirmed that it considered whether there were vacant positions into which the grievant could have been placed and determined there were none for which she was minimally qualified. *See* DHRM Policy 1.30, *Layoff*, at 5

Explanation of benefits

The grievant next alleges that the university failed to advise her adequately about her rights and benefits under DHRM Policy 1.30. In particular, she disputes that management contacted her by telephone while she was on approved sick leave to notify her of her impending layoff. The grievant further contends that management did not explain the layoff process to her, specifically regarding the use of Yellow Cards and Blue Cards for preferential hiring.

DHRM Policy 1.30 provides that “[e]mployees who are on any paid leave . . . are considered active employees and shall be treated as if they were in their positions” for layoff purposes.¹⁴ Employees should receive written notification of the layoff “at least two weeks before the date of layoff or placement.”¹⁵ If an agency is unable to offer the affected employee a placement option within the agency, then the agency must initially

- 1) issue the Interagency Placement Screening Form (Yellow Card);
- 2) ensure that employees have access to the state job listing; [and]
- 3) inform employees that they may use the Yellow Card to gain preferential consideration for valid vacancies in any Executive Branch agency from the date of issuance until they are placed on leave without pay-layoff.¹⁶

The Yellow Card is used “to secure preferential consideration over applicants from outside an agency for positions for which [the affected employee is] minimally qualified in the same or lower Pay Band . . . from the date of issue until the employee’s layoff effective date.”¹⁷ The agency must also “give the employee the Blue Card with the final notice [of layoff] on the last day of work, or immediately prior to the last day of work.”¹⁸ The Blue Card “may be used by an employee on leave without pay-layoff to exercise preferential employment rights to a vacant classified position in another agency that is in the same Role as the employee’s former position.”¹⁹

Here, the university provided the grievant with notice of layoff on May 10, 2021. The evidence before EDR indicates that the grievant was on approved sick leave at the time, and thus the university contacted the grievant by telephone. Though the grievant disagrees with the university’s decision to proceed with the layoff while she was on leave, as well as with the method by which she received notice of layoff, the university’s actions appear to be consistent with the relevant provisions of DHRM Policy 1.30, which indicate that an employee may be laid off while on approved leave.²⁰ Moreover, it is not unreasonable for information about such a decision to be shared by telephone if the affected employee is unable to report to work. The grievant received notice on May 10 that she would be laid off effective May 25, approximately two weeks in advance

(stating that an employee must be placed “in the highest position available for which the employee is minimally qualified at the same or lower level in the same or lower Pay Band”).

¹⁴ DHRM Policy 1.30, *Layoff*, at 10.

¹⁵ *Id.* at 20.

¹⁶ *Id.* at 11.

¹⁷ *Id.* at 19.

¹⁸ *Id.* at 12.

¹⁹ *Id.* at 13.

²⁰ *Id.* at 10.

as recommended by Policy 1.30. Finally, the grievant also acknowledges that she received copies of the layoff forms, including Yellow Cards and Blue Cards, by mail. Indeed, the grievant signed and returned the Notice of Layoff or Placement form to the university. Having considered the grievant's arguments about these issues, EDR is unable to conclude that the university failed to comply with any mandatory provision of Policy 1.30 regarding the grievant's rights under the policy such that qualification of the grievance as to these matters would be warranted.

Recall

The grievant further asserts that the university failed to comply with DHRM Policy 1.30 by not offering her recall rights to at least one position that became vacant after her layoff. The grievant claims that she learned a new employee was hired for a security officer position, which appears to have assumed at least a portion of the grievant's former responsibility for working at the front desk of the police department. The grievant argues that she should have been offered recall to the security officer position. The grievant additionally contends that another administrative assistant with the department intended to resign from their position, but management convinced the employee not to resign in an effort to avoid offering the grievant recall rights to the position if it became vacant. DHRM Policy 1.30 states that "[r]ecall is intended to restore an employee to a position in his/her former agency and to the Role and salary held at layoff."²¹ The policy further provides that "[e]mployees have recall rights to positions for which they are minimally qualified *in their former Role, salary and agency*."²² Employees who have been placed on leave without pay-layoff retain recall rights for 12 consecutive months after the effective date of layoff.²³

In this case, the security officer position to which the grievant believes she should have been offered recall rights was in a different Role. As a result, she was not entitled to be recalled to that position under Policy 1.30. Regarding the police department's other administrative assistant, their position never actually became vacant and thus the grievant's recall rights were not implicated. According to the university, the employee in that position communicated their intent to resign for personal reasons, but later requested a change in her work schedule as an alternative to address their needs. The university approved the schedule change and permitted the employee to rescind the resignation.²⁴ Though the grievant has expressed concern about why the administrative assistant chose to rescind their resignation, the evidence before EDR does not demonstrate that the university acted improperly to avoid recalling the grievant. It appears instead that the university exercised its discretion under policy to retain a current employee whose circumstances had changed after they initially submitted a notice of resignation.

In conclusion, the grievance procedure accords much deference to management's exercise of judgment, particularly decisions as to what work units will be affected by layoff and the business functions to be eliminated or reassigned. Thus, a grievance that challenges an agency action like

²¹ *Id.* at 15.

²² *Id.* (emphasis added).

²³ *Id.*

²⁴ See DHRM Policy 1.70, *Termination/Separation from State Service* (stating that an agency may allow an employee to rescind their resignation).

this one does not qualify for a hearing unless there is sufficient indication that the resulting determination was plainly inconsistent with other similar decisions by the agency, or that the decision was otherwise arbitrary or capricious.²⁵ Although the grievant may disagree with the agency's assessments in this case, she has not presented evidence sufficient to support her assertion that the layoff had an improper motive, that other positions should have been abolished rather than her own, or that the agency's actions were otherwise arbitrary or capricious. Further, the grievant has not demonstrated that the agency misapplied or unfairly applied any mandatory provision in Policy 1.30, or that the decision to abolish her position was so unfair that it amounted to a disregard of the intent of Policy 1.30. Accordingly, the grievance does not qualify for a hearing on these grounds.

Nonetheless, we note that the grievant retains recall rights for 12 months from the effective date of her layoff.²⁶ While on leave without pay-layoff status, the grievant also retains grievance rights to challenge the alleged improper implementation, if any, of such recall rights or other benefits still due to her under the DHRM Policy 1.30. Accordingly, if the grievant wishes to challenge a failure to be recalled to a valid future vacancy, for example, the grievant could file a new grievance with the university and ultimately for consideration by EDR.

Hostile Work Environment and Discrimination

In addition, the grievant alleges that her layoff was the culmination of a pattern of harassing conduct that created a hostile work environment. Although DHRM Policy 2.35, *Civility in the Workplace*, prohibits workplace harassment²⁷ and bullying,²⁸ alleged violations must meet certain requirements to qualify for a hearing. Whether discriminatory or non-discriminatory, harassment or bullying may qualify for a hearing as an adverse employment action if the grievant presents evidence that raises a sufficient question whether the conduct was (1) unwelcome; (2) sufficiently severe or pervasive that it alters the conditions of employment and creates an abusive or hostile work environment; and (3) imputable on some factual basis to the agency.²⁹ As to the second element, the grievant must show that they perceived, and an objective reasonable person would perceive, the environment to be abusive or hostile.³⁰

²⁵ See *Grievance Procedure Manual* § 9 (defining an arbitrary or capricious decision as one made “[i]n disregard of the facts or without a reasoned basis”).

²⁶ DHRM Policy 1.30, *Layoff*, at 15.

²⁷ Traditionally, workplace harassment claims were linked to a victim's protected status or protected activity. However, DHRM Policy 2.35 also recognizes non-discriminatory workplace harassment, defined as “[a]ny targeted or directed unwelcome verbal, written, social, or physical conduct that either denigrates or shows hostility or aversion towards a person not predicated on the person's protected class.”

²⁸ DHRM Policy 2.35 defines bullying as “[d]isrespectful, intimidating, aggressive and unwanted behavior toward a person that is intended to force the person to do what one wants, or to denigrate or marginalize the targeted person.” The policy specifies that bullying behavior “typically is severe or pervasive and persistent, creating a hostile work environment.”

²⁹ See *Gilliam v. S.C. Dep't of Juvenile Justice*, 474 F.3d 134, 142 (4th Cir. 2007).

³⁰ *Freeman v. Dal-Tile Corp.*, 750 F.3d 413, 421 (4th Cir. 2014) (citing *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21-23 (1993)); see DHRM Policy Guide – *Civility in the Workplace* (“A ‘reasonable person’ standard is applied when assessing if behaviors should be considered offensive or inappropriate.”). “[W]hether an environment is ‘hostile’ or ‘abusive’ can be determined only by looking at all the circumstances. These may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance;

Apart from her layoff, the grievant alleges that the police chief systematically ignored and excluded her from workplace conversations, offered unwarranted criticism of a work assignment, and suggested that she apply to other jobs prior to her layoff. The grievant also claims that, as part of the layoff process, university management treated her disrespectfully by laying her off while she was on approved sick leave and generally failing to demonstrate consideration for her medical condition. Although the grievant argues that the university failed to investigate or address these concerns prior to her layoff, there is also no evidence in the grievance record to suggest that the grievant reported these matters to university management before filing her grievance.³¹

EDR has reviewed the grievance record in its entirety and interviewed the grievant by phone about her claims. Considering the grievant's claims as a whole, EDR cannot find that the facts as alleged raise a sufficient question as to whether the grievant has experienced conduct that is so severe or pervasive such that it rises to the level of a hostile work environment prior to her separation.³² DHRM Policy 2.35 and its associated guidance make clear that agencies must not tolerate workplace conduct that is disrespectful, demeaning, disparaging, denigrating, humiliating, dishonest, insensitive, rude, unprofessional, or unwelcome. However, these terms must be read together with agencies' broader authority to manage the means, methods, and personnel by which agency work is performed. The grievant's allegations about management's conduct prior to her layoff, though concerning in some respects,³³ do not demonstrate that she experienced a tangible adverse effect on the terms, conditions, and benefits of the grievant's employment. The grievant's claim of workplace harassment is more appropriately viewed as an assertion that her layoff was driven by a personally-motivated desire to remove her from employment without a business justification. We have considered the grievant's arguments on that issue above in relation to the requirements of DHRM Policy 1.30 and found no basis to conclude that the university lacked a business-related reason for abolishing the grievant's position or that the stated justifications were pretext for an improper reason.

The grievant further appears to allege that her layoff was 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 or expression, age,

and whether it unreasonably interferes with an employee's work performance." *Harris*, 510 U.S. at 23 (1993); *see, e.g., Parker v. Reema Consulting Servs.*, 915 F.3d 297, 304-05 (4th Cir. 2019) (finding that a false rumor that an employee was promoted for sleeping with a manager altered the conditions of her employment because the employee was blamed for the rumor and told she could not advance in the company because of it); *Strothers*, 895 F.3d at 331-32 (holding that a hostile work environment could exist where a supervisor overruled the employee's bargained-for work hours, humiliated the employee for purportedly violating the dress code, required her to report every use of the restroom, and negatively evaluated her based on perceived slights).

³¹ The grievant has not alleged that the university laid her off because she used sick leave or in an attempt to deny or interfere with any related rights, such as those that might have been available to her under the Family and Medical Leave Act ("FMLA"). Indeed, the record before EDR does not indicate whether the grievant sought or was approved for FMLA leave. Nonetheless, we have not reviewed any evidence to demonstrate a causal connection between the grievant's use of leave and her layoff; to the contrary, we find that the university has articulated a factual and business-related basis for the layoff as discussed above. The grievant has not offered evidence to suggest that the university interfered with her use of leave or retaliated against her because of her use of leave.

³² *See, e.g., EDR Ruling No. 2014-3836; cf. Parker*, 915 F.3d at 304-05; *Strothers*, 895 F.3d at 331-32.

³³ *See, e.g., EDR Ruling No. 2019-4948* ("[A] senior manager who explicitly ignores another manager (or any employee for that matter) is engaging in unprofessional conduct.")

political affiliation, genetics, disability, or veteran status.³⁴ For a claim of discrimination to qualify for a hearing, there must be more than a mere allegation that discrimination has occurred. Rather, 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. If, however, the agency provides a legitimate, nondiscriminatory business reason for its action, the grievance will not be qualified for a hearing, absent sufficient evidence that the agency's professed business reason was a pretext for discrimination.³⁵

In this case, the grievant has not identified a protected status on which the alleged discrimination was based. Moreover, even assuming the grievant had specified a protected status, EDR has found no reason to conclude that the layoff process was conducted improperly here, as discussed more fully above. Although the grievant may disagree with the agency's decision to lay her off, such disagreement alone does not establish that the agency's actions in relation to her layoff were discriminatory, and there is otherwise insufficient evidence to show that the agency's stated business reasons for the layoff were pretextual. To qualify for a hearing, 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. There are no such facts here.

Accordingly, the grievance does not qualify for a hearing on any of these grounds.³⁶

CONCLUSION

For the reasons expressed above, the facts presented by the grievant do not constitute a claim that qualifies for a hearing under the grievance procedure at this time.³⁷ EDR's qualification rulings are final and nonappealable.³⁸

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³⁴ See, e.g., Executive Order 1, *Equal Opportunity* (2018); DHRM Policy 2.05, *Equal Employment Opportunity*.

³⁵ See, e.g., *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007) (citation omitted).

³⁶ Although such a claim has not been clearly articulated to EDR, to the extent the grievant wishes to pursue a discrimination claim, she could file a complaint with the federal Equal Employment Opportunity Commission or the Office of Civil Rights at the Office of the Attorney General, for example.

³⁷ See *Grievance Procedure Manual* § 4.1. To the extent this ruling does not address any specific issue raised in the grievance, EDR has thoroughly reviewed the grievance record and determined that the grievance does not raise a sufficient question as to whether the grievant experienced an adverse employment action, whether discrimination, retaliation, or discipline may have improperly influenced any management decision cited in the grievance, or whether the agency may have misapplied and/or unfairly applied state policy that would warrant qualification for a hearing.

³⁸ See Va. Code § 2.2-1202.1(5).