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**QUALIFICATION RULING**

In the matter of the Department of State Police  
Ruling Number 2022-5313  
November 30, 2021

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether her August 25, 2021 grievance with the Department of State Police (the “agency”) qualifies for a hearing. For the reasons discussed below, the grievance does not qualify for a hearing.

FACTS

The grievant works for the agency as a Program Support Technician. In July 2021, she participated in the agency’s recruitment process for a Program Support Technician Senior position. The agency interviewed three candidates, including the grievant, for the position.<sup>1</sup> During interviews with a three-person selection panel, the candidates were asked a standardized set of questions and each panel member recorded notes about the candidates’ answers. Based on their responses to the interview questions, the panel recommended all three candidates for hiring, ranking them in order of preference. The grievant was ranked second out of the three candidates. The panel’s top-ranked candidate was ultimately selected for the Program Support Technician Senior position.

On or about August 25, 2021, the grievant initiated a grievance alleging that the “[a]pplication/interviewing process was conducted unprofessionally and appeared to result in systemic disqualification without cause.” In the grievance, the grievant contends that she should have been selected for the Program Support Technician Senior position because she has more experience than the successful candidate, noting her length of employment and history of satisfactory work performance. As relief, the grievant asked “[t]o be fairly and equitably evaluated” for the position. Following the management resolution steps, the agency head declined to qualify the grievance for a hearing. The grievant now appeals that determination to EDR.

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<sup>1</sup> A fourth candidate was offered an interview but declined.

## 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.<sup>2</sup> Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve an “adverse employment action.”<sup>3</sup> 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.”<sup>4</sup> Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one’s employment.<sup>5</sup> For purposes of this ruling, we assume that the grievant has alleged an adverse employment action because it appears the position she applied for would have been a promotion.

Here, the grievant essentially alleges that the agency misapplied or unfairly applied policy by not selecting her for the Program Support Technician Senior position, claiming that she was more qualified and experienced than the successful candidate.<sup>6</sup> In support of her position, the grievant explains that she has worked for the agency for over 25 years and held her current position for over 15 years. The grievant further states that she has received positive evaluations and other commendations demonstrating her exceptional work performance and has assisted with training other employees, including the candidate who was selected for the 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.<sup>7</sup> Moreover, 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 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.<sup>8</sup>

DHRM Policy 2.10, *Hiring*, provides that “[a] set of interview questions must be developed and asked of each applicant” who is interviewed, that those “[q]uestions should seek information

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<sup>2</sup> Va. Code § 2.2-3004(C); see *Grievance Procedure Manual* §§ 4.1(b), (c).

<sup>3</sup> *Grievance Procedure Manual* § 4.1(b).

<sup>4</sup> *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

<sup>5</sup> *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007) (citation omitted).

<sup>6</sup> Although the grievant describes concerns about “systemic disqualification” and seeks “fair[] and equitabl[e]” consideration for the position, she has not alleged that the selection process was carried out in a discriminatory or retaliatory manner. Accordingly, EDR will only address whether the selection was consistent with policy.

<sup>7</sup> See DHRM Policy No. 2.10, *Hiring*, at 22.

<sup>8</sup> See *Grievance Procedure Manual* § 9 (defining arbitrary or capricious as “[i]n disregard of the facts or without a reasoned basis.”).

related to the applicant's knowledge, skills, and ability to perform the job," and that "[i]nterviewers must document applicants' responses to questions to assist with their evaluation of each candidate's qualifications."<sup>9</sup> In this case, it is apparent from an examination of the Interview Evaluation Worksheets that the panel determined all three candidates were qualified for the position. Indeed, the panel's notes confirm they were all recommended for hiring. However, the agency could only select one candidate because a single position was available. Faced with this difficult decision, the panel concluded that the successful candidate was most suitable for the position and indicated as such in its ranking of the candidates.

EDR has thoroughly reviewed the panel's notes from the grievant's and the successful candidate's interviews and finds that the panel's decision to not select the grievant for the position was consistent with its assessment of her suitability for the position. The panel's comments about the grievant's and the successful candidate's discussion of some topics covered during the interview are similar in some respects. For example, both candidates appear to have described essential qualifications for the Program Support Technician Senior position, identified skills for effective communication, and demonstrated experience with data entry. The grievant and the successful candidate also appear to have provided satisfactory answers to questions about applying analytical skills to solve a problem, working collaboratively on a team, and handling confidential information. In contrast, the panel's notes indicate that the grievant's responses to questions about displaying listening skills, taking on additional responsibilities, and working in a rapidly-evolving workplace were less detailed and thorough than the successful candidate's answers. These distinctions in the candidates' responses appear to support the agency's ultimate hiring decision. Moreover, though we do not disagree that the grievant's seniority and work experience were important qualifications to be considered as part of a selection process, they are not the sole determinants in a selection panel's decision as to which candidate is best suited for a particular position.

A candidate's suitability for a particular position is not always readily apparent by a plain reading of the comments recorded during an interview. Agency decision-makers deserve appropriate deference in making determinations regarding a candidate's knowledge, skills, and abilities. As a result, EDR will not second-guess management's decisions regarding the administration of its procedures absent evidence that the agency's actions are plainly inconsistent with other similar decisions within the agency or otherwise arbitrary or capricious. Under the circumstances presented here, EDR can find nothing to indicate that the grievant was so clearly a better candidate that the selection panel's recommendation disregarded the facts or were anything other than a reasonable exercise of discretion based on a good faith assessment of the candidates' suitability for the position, based on their performance at their interviews.

Although the grievant disagrees with the panel's assessment, EDR's review of the grievance record indicates that the information available reasonably supports the selection panel's conclusion that the successful candidate would be more suitable for the position. The grievant has not presented evidence to demonstrate that she was not selected for an improper reason or that the agency's determination disregarded the pertinent facts or was otherwise arbitrary or capricious. Accordingly, the grievance does not raise a sufficient question whether the agency misapplied or unfairly applied policy and does not qualify for a hearing on those grounds.

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<sup>9</sup> DHRM Policy 2.10, *Hiring*, at 11.

EDR's qualification rulings are final and nonappealable.<sup>10</sup>

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<sup>10</sup> Va. Code § 2.2-1202.1(5).