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QUALIFICATION RULING

In the matter of the Department for Aging and Rehabilitative Services
Ruling Number 2022-5366
March 25, 2022

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) on whether her June 3, 2021, grievance with Department for Aging and Rehabilitative Services (the “agency”) qualifies for a hearing. For the reasons discussed below, this grievance is not qualified for a hearing.

FACTS

The grievant works at one of the agency’s locations as a Program Administration Specialist II in Pay Band 5, reporting to the director of her facility. The grievant asserts that, in 2019, the former director requested a review of her position classification based on changes to her job duties. The former director subsequently retired and it appears that no classification review occurred at that time. In 2020, the agency carried out a reorganization at the grievant’s facility, which the grievant contends led to further adjustments to her job duties.

The agency subsequently implemented a salary alignment in 2021 for employees in certain positions at the grievant’s facility. The agency developed a scale for evaluating employees based on their position, years of experience, and corresponding salary. As relevant to the grievant, agency managers were considered as either “Manager 1” or “Manager 2,” based on their role and responsibilities. The agency explained to the grievant and other employees that Manager 1 positions were managers of a program area, while Manager 2 positions supervised a division. The grievant was reviewed as a Manager 1 and received a salary increase of approximately \$8,000 as part of the salary alignment.

On or about June 3, 2021, the grievant initiated a grievance alleging “unfair application or misapplication of state and agency policies, rules, regulations, and guidelines” relating to her position classification, which has affected her compensation. In particular, the grievant contends that “[t]he judgment and justification . . . for determining positions reviewed and determining Management levels is arbitrary and capricious.” According to the grievant, other managers who report to the director are classified in Roles within Pay Band 6, which led to them being evaluated at the Manager 2 level and receiving greater pay increases through the salary alignment process.

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As relief, the grievant requested “a thorough review of all information provided[and] an in-depth re-review of [her] position and responsibilities to align with” other peers who report to the director.

While this grievance was proceeding through the management steps, the agency reviewed the grievant’s position and found that her classification as a Program Administration Specialist II in Pay Band 5 is appropriate. Following the management resolution steps, the agency head declined to qualify the grievance for a hearing.¹ The grievant now appeals that decision 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, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.³ Claims relating solely to the establishment and revision of salaries, wages, and general benefits generally do not qualify for a hearing, unless the grievant presents evidence raising a sufficient question as to whether discrimination, retaliation, or discipline may have improperly influenced management’s decision, or whether state or agency policy may have been misapplied or unfairly applied.⁴

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve “adverse employment actions.”⁵ 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.”⁶ Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one’s employment.⁷ For purposes of this ruling only, EDR will assume that the grievant has alleged an adverse employment action because she asserts issues with his position classification that could have affected her compensation.

In this case, the grievant essentially contends that the agency has failed to evaluate her position classification properly since 2019, which led to her receiving a smaller pay increase during the salary alignment in 2021 as compared with her peers who report to the facility director. The grievant alleges that the agency did not consider accurate Employee Work Profiles (“EWPs”) describing her job duties when reviewing her position because, when she requested copies of her EWP in 2019 and 2021, she received out-of-date versions of the documents from 2017 or earlier that did not reflect changes to her job that had since taken place. The grievant also argues that the agency explained its salary alignment decision as due to the education level required for the positions reporting to her, which appears to be less than that of the direct reports for other managers

¹ The agency head’s formal response to the grievance was delayed due to what appears to an administrative oversight. See EDR Ruling No. 2022-5360. The agency addressed this issue when the grievant requested a compliance ruling from EDR, wherein we found that any issues of agency noncompliance had been corrected. *Id.*

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

³ See Va. Code § 2.2-3004(B).

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

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

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

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

who are classified in higher Roles. The grievant believes this explanation reflects an “inequitable and inconsistent” practice for making position classification and pay decisions, that the agency overlooked experience as a substitute for educational requirements of her direct reports, and that the agency generally failed to justify its classification and compensation decisions consistent with the pay factors laid out in DHRM Policy 3.05, *Compensation*.⁸

Position Classification

The grievant first alleges that the agency has failed to adequately review her position classification, with the result that she is classified in a lower Role than she believes is accurate based on her job duties and responsibilities. For the grievant’s claims regarding her position classification to qualify for a hearing, there must be evidence raising a sufficient question as to whether management violated a mandatory policy or whether the challenged action, in its totality, is so unfair as to amount to a disregard of the intent of the applicable policy. The General Assembly has recognized that the Commonwealth’s system of personnel administration should be “based on merit principles and objective methods” of decision-making.⁹ In addition, the Commonwealth’s classification plan “shall provide for the grouping of all positions in classes based upon the respective duties, authority, and responsibilities,” with each position “allocated to the appropriate class title.”¹⁰

The above statutes evince a policy that would require state agencies and institutions to allocate positions having substantially the same duties and responsibilities to the same role. Importantly, the grievance procedure accords much deference to management’s exercise of judgment, including management’s assessment of 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, classifying a position in a particular Role), 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.¹¹

As support for her arguments regarding her position classification, the grievant has described a history of concerns about the accuracy of her EWP, which the agency used when evaluating whether her position is appropriately classified as a Program Administration Specialist II in Pay Band 5. For example, the grievant states that the former facility director made changes to her EWP in 2019 that reflected an expansion of her job duties, but the modified EWP does not appear to have been submitted to human resources or reviewed for classification purposes.¹² When the grievant requested a copy of her EWP in 2021, she alleges that she received a document dating

⁸ Although the grievant refers to provisions of DHRM Policy 2.05, *Equal Employment Opportunity*, and the agency’s Salary Administration Plan regarding discrimination and equity, she has not identified any protected status on which the agency described in her grievance are allegedly based or otherwise articulated a claim of discrimination. As a result, we will not address the issue of discrimination further.

⁹ Va. Code § 2.2-2900.

¹⁰ *Id.* § 2.2-103(B)(1).

¹¹ 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.

¹² Notably, the grievant’s documentation regarding the former director’s adjustments to her EWP 2019 indicates that the former director requested a salary increase for the grievant, but not a change in her position classification to a higher Role.

from 2016-2017. The grievant further disputes the agency's consideration of staff she supervises in its assessment of her classification, arguing that the education level required for those positions was not an equitable method of reviewing her Role without also considering those employees' work experience as a substitute for education.

In response, the agency has explained that it implemented organizational changes at the grievant's facility in 2020 after recruiting a new director, at which time the grievant's EWP was revised to align with the new organizational structure. The agency maintains that any revisions to the grievant's EWP from 2019 were not submitted for review and approval by human resources. According to the agency, no classification review for the grievant's position took place before October 2021, after the grievant had initiated her grievance. The agency asserts that the outcome of the October 2021 classification review – which resulted in no change to the grievant's position classification – was reasonable and based on the grievant's present job responsibilities.

Having thoroughly considered the evidence provided by the parties, EDR concludes that the agency appears to have exercised appropriate discretion under policy in determining the classification of the grievant's position. The grievant's evidence indicates that there may have been some irregularities in 2019 and 2020 with her EWP such that it did not at all times accurately reflect her job duties. For example, it is difficult to explain why the most recent EWPs for the grievant on file with the agency's human resources office at those times appear to have dated from 2017 or earlier.¹³ Had the agency reviewed the grievant's position classification at that time, its determination about the most appropriate Role based on her duties may not have been accurate. However, the agency has stated that it did not review the grievant's classification until after she had filed her grievance raising these issues. More significantly, and despite these concerns regarding the agency's documentation and evaluation of her position in the past, it is clear that the agency conducted a comprehensive review of the grievant's position in October 2021, using her current EWP at that time, and concluded that she is appropriately classified as a Program Administration Specialist II in Pay Band 5.

In explaining the basis for its conclusion, the agency stated that it evaluated the grievant's responsibilities in comparison to peers who report to the facility director, noting that the grievant is "primarily responsible for activities and focused on responsibilities that support and promote the programs/program activities" of her facility. The agency contrasted the grievant's position with others who "oversee comprehensive programs with more direct reports and larger overall headcounts," including "professional staff." The agency noted that the comparators also "have budgetary responsibilities" and "policy responsibilities for their specific areas," whereas the grievant does not. The agency further considered whether the grievant's position was comparable to the Program Administration Specialist III Role, concluding that it did "not reach the level of complexity" for that Role based on her job duties and that the Program Administration Specialist II Role was "a better fit . . . due to the complexity differences."

Significantly, the grievant does not appear to assert that her current EWP inaccurately describes her job responsibilities, but rather disputes the agency's decision that her duties do not support classification of her position into a higher-level Role. Based on a review of the job

¹³ Under DHRM Policy 1.40, *Performance Planning and Evaluation*, a new EWP is generally presented to the employee as part of the annual performance evaluation process. Human resources would presumably retain the final version of that document.

classification structure provided on DHRM's website and the agency's documented justification for its classification decision in October 2021, EDR finds that the agency has exercised reasonable discretion in classifying the grievant's position as a Program Administration Specialist II in Pay Band 5.¹⁴ Regarding the grievant's claim that the agency improperly considered the education level of her direct reports when assessing her position classification, we likewise find no error based on a review of the evidence in the grievance record. The grievant is correct that an assessment of the education level of positions reporting to a supervisor, on its own, is not necessarily indicative of the scope or complexity of the supervisor's Role. Though the grievant's concern about this point is understandable, the agency's justification for its classification decision notes that employees in higher Roles not only supervise "professional staff" who presumably have more advanced education, but also greater numbers of employees overall. In this case, the evidence before EDR indicates that supervisory responsibility was one of several factors that went into the agency's assessment of the grievant's classification. For example, the agency has indicated that it considered budgetary and policy responsibilities, as well as the comprehensiveness of program responsibilities overall, for employees reporting to the facility director and found that the grievant's position was less complex than other Roles.

The evidence before EDR suggests that the grievant's position classification has remained the same since at least 2019.¹⁵ Because we find the agency exercised its discretion appropriately in finding that the grievant's position should be classified as a Program Administration Specialist II in Pay Band 5, we likewise have no basis to conclude that she was misclassified in 2019 or 2020. Nonetheless, we acknowledge that there appear to have been at least some inconsistencies in the documentation she received from the agency regarding her position description during that time. On their own, however, these inconsistencies are not sufficient to support a conclusion that she is currently misclassified in her position or that she was misclassified at any time relevant to the agency's salary review, which is discussed in greater detail below.

In summary, the grievant may disagree with the agency's assessment of her job duties and position classification, but she has not offered evidence that raises a question whether the agency misapplied or unfairly applied policy, acted in a manner that was inconsistent with other decisions regarding organization and/or classification of positions, or was otherwise arbitrary or capricious. It appears instead that the agency's classification of the grievant's position is consistent with the discretion granted by policy. Accordingly, the grievance does not qualify for hearing on these grounds.

Compensation

Turning to the matter of the grievant's compensation, she appears to argue that management has misapplied or unfairly applied compensation policy by evaluating her salary at the Manager 1 level on the agency's salary alignment scale. The grievant alleges that other employees who report to the facility director were assessed at the Manager 2 level, and therefore

¹⁴ For further information about the Career Group to which the Program Administration Specialist Roles are assigned, as well as a general description of the complexity, results, and accountability for each Role, see DHRM's website at <https://web1.dhrm.virginia.gov/itech/DHRMWebAssets/careergroups/admin/ProgAdmin19210.htm>.

¹⁵ The agency noted that the grievant's EWP contained a typographical error at some point and identified her role as Program Administration Specialist I, but accurately stated she was in Pay Band 5. However, the agency also confirmed to the grievant that she has been a Program Administration Specialist II since 2014. Ultimately, there is no dispute that the grievant has been in the same Role at all times relevant to the matters in this grievance.

contends that her salary should have been reviewed at the Manager 2 level as well, which she believes would have resulted in a greater salary increase than what she received.

DHRM Policy 3.05, *Compensation*, allows agencies to grant an employee an in-band adjustment, which is a “non-competitive pay practice that allows agency management flexibility to provide potential salary growth and career progression within a Pay Band or to resolve specific salary issues.”¹⁶ Like all pay practices, in-band adjustments are intended to emphasize merit rather than entitlements, such as across-the-board increases, while providing management with great flexibility and a high degree of accountability for justifying their pay decisions.¹⁷ Although DHRM Policy 3.05 reflects the intent that similarly situated employees should be comparably compensated, it also invests agency management with broad discretion to make individual pay decisions in light of 13 enumerated pay factors: (1) agency business need; (2) duties and responsibilities; (3) performance; (4) work experience and education; (5) knowledge, skills, abilities and competencies; (6) training, certification and licensure; (7) internal salary alignment; (8) market availability; (9) salary reference data; (10) total compensation; (11) budget implications; (12) long term impact; and (13) current salary.¹⁸ Because agencies are afforded great flexibility in making pay decisions, EDR has repeatedly held that qualification is warranted only 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.¹⁹

There appears to be no dispute in this case that the grievant is a competent and valued employee. She has worked for the agency for many years and, by all accounts, effectively performs her job responsibilities to the agency’s satisfaction. Having reviewed the information in the grievance record, however, EDR finds insufficient evidence to demonstrate that the agency’s decision to review the grievant’s pay at the Manager 1 level on its salary alignment scale violated a specific mandatory policy provision or was outside the scope of the discretion granted to the agency by the applicable compensation policies. According to the evidence provided by the parties, the agency implemented a salary alignment at the grievant’s facility in 2021. Managers reporting to the facility director were assessed as either a Manager 1 or Manager 2, with accompanying salary ranges based on their experience. The grievant was reviewed as a Manager 1 and, according to the agency, received a salary increase. Although the grievant’s evidence indicates that many of the other managers who report to the facility director were reviewed at the Manager 2 level, it also appears that these employees work in Roles that are in Pay Band 6. Significantly, at least one other manager reporting to the director, who works in a Pay Band 5 Role like the grievant, was also assessed as a Manager 1. It therefore appears that a primary consideration for the agency in determining whether employees should be considered as a Manager 1 or Manager 2 on the salary alignment scale was their Role. This conclusion is bolstered by the agency’s explanation that, on the salary alignment scale, a Manager 1 supervised a “program area” while a Manager 2 supervised “an entire division.” This distinction in managerial responsibility appears to align with differences in the scope of employees’ relative Roles within the organization. Finally, as discussed more fully above, the agency has recently conducted a classification review of the grievant’s position and

¹⁶ DHRM Policy 3.05, *Compensation*, at 7.

¹⁷ See DHRM Human Resource Management Manual, Ch. 8, *Pay Practices*.

¹⁸ DHRM Policy 3.05, *Compensation*, at 22.

¹⁹ See *Grievance Procedure Manual* § 9 (defining arbitrary or capricious as a decision made “[i]n disregard of the facts or without a reasoned basis”); see also, e.g., EDR Ruling No. 2008-1879 (and authorities cited therein).

determined that she is appropriately classified as a Program Administration Specialist II in Pay Band 5, and we have found no error in that conclusion.²⁰

Moreover, apart from the grievant's general disagreement with the agency's classification review and assessment of her position as a Manager 1 on the salary alignment scale, she has not presented evidence to demonstrate that the agency failed to consider any applicable factors in determining how her salary should be adjusted for alignment purposes. Considering the totality of the circumstances, an analysis of many of the individual pay factors—for example, job duties and responsibilities and internal salary alignment—with respect to employees who report to the facility director and are comparable to the grievant does not support a conclusion that the agency's existing salary structure violates any specific policy requirement. As stated above, DHRM Policy 3.05 is intended to grant the agency flexibility to address issues such as changes in an employee's job duties, work experience, and internal salary alignment.²¹ The policy is not intended to entitle employees to across-the-board salary increases or limit the agency's discretion to evaluate whether an individual pay action is warranted. The grievant argues that certain pay factors support her position that she should be considered a Manager 2 on the agency's salary alignment scale, but the agency's position that the relevant pay factors do not substantiate the need to increase the grievant's salary further is also valid. In cases like this one, where a mandatory entitlement to a pay increase does not exist, agencies have great discretion to weigh the relevant factors. For these reasons, EDR cannot find that the agency's assessment of the grievant's salary in this case was improper or otherwise arbitrary or capricious. Accordingly, the grievance does not qualify for a hearing on this basis.

CONCLUSION

For the reasons discussed above, EDR finds that the facts presented in the grievance record do not constitute a claim that qualifies for a hearing under the grievance procedure.²² Because the grievance does not raise a sufficient question whether the agency misapplied or unfairly applied policy relating to position classification or compensation, the grievance does not qualify for a hearing on those grounds.

EDR's qualification rulings are final and nonappealable.²³

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²⁰ In addition, the agency has noted that, during the management steps, the agency head approved a one-time bonus for the grievant to address any concerns about duties she might have performed in the past that were not reflected in her EWP prior to facility reorganization in 2020 and salary alignment in 2021.

²¹ See DHRM Policy 3.05, *Compensation*.

²² *Grievance Procedure Manual* § 4.1.

²³ See Va. Code § 2.2-1202.1(5).