

Issues: Reconsideration of Qualification Ruling No. 2017-4548 issued on June 22, 2017; Ruling Date: August 16, 2017; Ruling No. 2018-4591; Agency: Virginia Employment Commission; Outcome: Request Denied.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Equal Employment and Dispute Resolution¹

RECONSIDERED QUALIFICATION RULING

In the matter of the Virginia Employment Commission
Ruling Number 2018-4591
August 16, 2017

The grievant has requested that the Office of Equal Employment and Dispute Resolution (EEDR) reconsider its qualification determination in Ruling Number 2017-4548 (the initial qualification ruling), which held that the grievant's March 2, 2017 grievance does not qualify for a hearing.² For the reasons discussed below, we find no error with the initial qualification determination.

At issue in the June 22, 2017 initial qualification ruling was whether the grievant's March 2, 2017 grievance challenging the agency's denial of an in-band pay adjustment to her salary qualified for a hearing.³ The grievant argues, in effect, that management has misapplied and/or unfairly applied policy by declining to approve an in-band adjustment for her, based on several factors that she alleges justify a salary increase. In that ruling, this Office concluded that the grievance did not qualify for a hearing.⁴ In her request for reconsideration, the grievant disputes two factual points from the initial qualification ruling: 1) that she received a 16.9% pay increase on or about June 25, 2009, and 2) that another employee paid less than she is similarly situated.

EEDR has reviewed the additional information provided by the grievant. With respect to the first point, it appears that the date upon which the grievant received the 16.9% increase for an upward role change may have occurred effective June 25, 2002, rather than June 25, 2009. Consequently, the date will be corrected in the initial ruling. However, the analysis of the underlying issue remains unchanged by this fact. Likewise, even if EEDR assumes the grievant is correct that the employee earning less than she does not perform the same type or quality of work, EEDR's analysis of the issue presented would remain unchanged. Accordingly, the initial ruling will be updated to eliminate consideration of the other employee earning less than the grievant.

The initial qualification ruling held that the primary policy implicated in this grievance, DHRM Policy 3.05, *Compensation*, affords agencies great flexibility in making pay decisions.⁵ In this instance, the agency argued that the grievant is fairly compensated based upon its

¹ Effective January 1, 2017, the Office of Employment Dispute Resolution merged with another office area within the Department of Human Resource Management, the Office of Equal Employment Services. The *Grievance Procedure Manual* has now been updated to reflect this Office's name post-merger as the Office of Equal Employment and Dispute Resolution.

² See EDR Ruling No. 2017-4548.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

consideration of the relevant pay factors and the grievant's duties. After a review of the documentation presented, EEDR did not find sufficient evidence to demonstrate that the grievant's salary as compared to other agency employees in her workgroup violates a specific mandatory policy provision or is outside the scope of the discretion granted to the agency by the applicable compensation policies. The grievant has not identified, nor are we aware of, any specific policy requirement violated by the agency's existing salary structure. As such, EEDR concludes that there are no grounds to reconsider or change the analysis of EEDR's initial qualification ruling.

The grievant's request for reconsideration is denied and the grievance remains closed. EEDR's rulings on matters of qualification are final and nonappealable.⁶



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⁶ See Va. Code § 2.2-1202.1(5).