

Issue: Qualification – Compensation (Role Change); Ruling Date: April 22, 2014;
Ruling No. 2014-3834; Agency: Virginia Department of Transportation; Outcome:
Not Qualified.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Employment Dispute Resolution

QUALIFICATION RULING

In the matter of the Virginia Department of Transportation
Ruling Number 2014-3834
April 22, 2014

The grievant has requested a ruling on whether her September 19, 2013 grievance with the Virginia Department of Transportation (the agency) qualifies for a hearing. For the reasons discussed below, the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) finds that this grievance does not qualify for a hearing.

FACTS

The grievant initiated her September 19, 2013 grievance to challenge her reclassification to a "Financial Services Specialist II" role title from a role title of "Financial Services Manager I." She asserts that the agency's actions constitute a misapplication and/or unfair application of policy. The agency head denied the grievant's request for qualification of her grievance for hearing, and she now appeals that decision to EDR.

DISCUSSION

By statute and under the grievance procedure, complaints relating solely to issues such as to the establishment and revision of salaries, wages, position classifications, and general benefits "shall not proceed to a hearing"¹ unless there is sufficient evidence of discrimination, retaliation, unwarranted discipline, or a misapplication or unfair application of policy. Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions."² 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."³ Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one's employment.⁴ For purposes of this ruling only, we will assume that the grievant's claims regarding her role title could constitute adverse employment actions, insofar as they relate to her compensation.

¹ Va. Code § 2.2-3004(C).

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

³ *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

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

Misapplication and/or Unfair Application of Policy

The grievant argues that the agency misapplied and/or unfairly applied policy by changing her role title to “Financial Services Specialist II” from “Financial Services Manager I.” The grievant states that she was placed in the Financial Services Manager I role title in 2003, in recognition of increased job responsibilities, and that, in the intervening period, she has taken on additional duties, including acting as facility manager. She questions why, given these duties, her role title was reclassified to no longer reflect a managerial status. She also challenges the agency’s failure to advise her of the role change prior to the reclassification.

The agency asserts that the grievant’s position, as well as several other financial positions, was evaluated prior to the 2012-2013 agency compensation study to ensure consistency across career groups. As a result of this evaluation, the grievant’s position was determined by the agency to be incorrectly classified, and the role title of the position was reclassified to Financial Services Specialist II. Although the decision to reclassify the position was apparently made in February 2013, the grievant apparently did not learn of the reclassification until September 2013.⁵

In response to the concerns raised by the grievant in her September 19, 2013 grievance, the agency conducted a second audit of her position. That audit confirmed the agency’s determination that the grievant was properly classified as a Financial Services Specialist II. The agency considered, among other factors, the scope of work, complexity of accounting activities, size of the fiscal operation and the number and type of staff overseen by the position. Two critical factors in determining that the position was appropriately reclassified as a Financial Services Specialist II were that the position does not supervise subordinate supervisors or manage multiple financial areas. In assessing the grievant’s duties, the agency considered the duties performed in relation to her permanent work assignment, rather than those performed in her capacity as acting facility manager. The agency notes, however, that during the period the grievant has performed the facility manager duties, she has received acting pay in addition to her regular salary.

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 primary policy implicated by the grievant’s claim regarding the Compensation Study is DHRM Policy 3.05, *Compensation*.⁶ That policy reflects the intent to invest agency management with broad discretion for making decisions regarding pay.⁷ Also at issue is the Commonwealth’s Job Organization Structure, which sets forth in general terms descriptions of the various career groups and roles therein.⁸

⁵ The agency agrees that through an oversight, the grievant was not notified of her reclassification prior to it taking effect.

⁶ The agency’s “Pay Practice Administration Guidelines for Classified Employees” mirrors DHRM Policy 3.05.

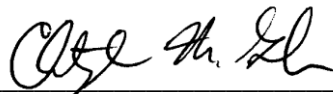
⁷ See DHRM Policy 3.05, *Compensation*.

⁸ See DHRM Job Organization Structure, <http://www.dhrm.virginia.gov/compensation/jobstructure.html> (last visited April 22, 2014).

With respect to the grievant's assertion that the agency misapplied policy by changing her role title, EDR has found no mandatory policy provision that the agency has violated, and the grievant has cited to none. Further, although the grievant's frustration over not having been told about the reassignment is understandable, the lack of communication is not a basis for qualification. However, even though agencies are afforded great flexibility in making pay decisions, 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), 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.⁹

In this case, the agency appears to have reclassified the grievant's position based on a reasoned analysis of the position's responsibilities and duties consistent with the Job Organization Structure. Having determined that the grievant's previous classification was erroneous, the agency acted understandably in reclassifying the position. The agency's decision not to consider the grievant's acting facility manager duties was also reasonable, as those duties have not been assigned to her on a permanent basis and, indeed, the facility manager position is currently in the recruitment process.¹⁰ Agency decision-makers deserve appropriate deference in making these determinations and 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. Although the grievant may disagree with the agency's conclusions, EDR has reviewed nothing that would suggest the agency's determination disregarded the pertinent facts or was otherwise arbitrary or capricious. Therefore, the grievant's claim of misapplication and/or unfair application of policy does not qualify for a hearing.

EDR's qualification rulings are final and nonappealable.¹¹



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⁹ See, e.g., EDR Ruling 2008-1879.

¹⁰ The grievant notes that her current EWP continues to identify her role title as "Financial Services Manager I" and that spreadsheets related to the compensation study are inconsistent with respect to information provided about employees. These inconsistencies are not sufficient to establish that the agency violated policy or acted in an arbitrary or capricious manner.

¹¹ Va. Code § 2.2-1202.1(5).