

Issue: Qualification – Performance (arbitrary/capricious evaluation); Ruling Date: January 12, 2015; Ruling No. 2015-4071; Agency: Virginia Department of Health; Outcome: Partially Qualified.



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

QUALIFICATION RULING

In the matter of the Virginia Department of Health
Ruling Number 2015-4071
January 12, 2015

This ruling addresses the partial qualification of the grievant's October 2, 2014 grievance with the Virginia Department of Health (the "agency"). That grievance raised claims regarding a Group II Written Notice and the grievant's 2014 performance evaluation. The agency head qualified the grievant's challenge to the Group II Written Notice for hearing, but denied qualification of the performance evaluation claim. The grievant has appealed the agency head's partial qualification of his grievance to the Office of Employment Dispute Resolution ("EDR") at the Department of Human Resource Management. For the reasons discussed below, the grievant's additional claim regarding his performance evaluation does not qualify for a hearing.

FACTS

On or about October 2, 2014, the grievant received his annual performance evaluation for 2013-2014, which rated his overall performance as "Below Contributor." On the same day, the grievant initiated a grievance challenging the performance evaluation and a Group II Written Notice. After the agency head denied the grievant's request to qualify his performance evaluation claim for hearing, the grievant appealed 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.¹ The grievance statutes and procedure reserve to management the exclusive right to establish performance expectations and to rate employee performance against those expectations.² Accordingly, for this grievance to qualify for a hearing, there must be facts raising a sufficient question as to whether the grievant's performance rating, or an element thereof, was "arbitrary or capricious."³

A performance rating is arbitrary or capricious if management determined the rating without regard to the facts, by pure will or whim. An arbitrary or capricious performance

¹ See *Grievance Procedure Manual* § 4.1.

² See Va. Code § 2.2-3004(B) (reserving to management the exclusive right to manage the affairs and operations of state government).

³ *Id.* § 2.2-3004(A); *Grievance Procedure Manual* § 4.1(b).

evaluation is one that no reasonable person could make after considering all available evidence. If an evaluation is fairly debatable (meaning that reasonable persons could draw different conclusions), it is not arbitrary or capricious. Thus, mere disagreement with the evaluation or with the reasons assigned for the ratings is insufficient to qualify an arbitrary or capricious performance evaluation claim for a hearing when there is adequate documentation in the record to support the conclusion that the evaluation had a reasoned basis related to established expectations. However, if the grievance raises a sufficient question as to whether a performance evaluation resulted merely from personal animosity or some other improper motive—rather than a reasonable basis—a further exploration of the facts by a hearing officer may be warranted.

In this case, the grievant has not raised a sufficient question as to whether the agency was arbitrary or capricious in rating his overall performance as “Below Contributor” on his 2013-2014 annual performance evaluation. During the performance cycle, the grievant received two Group II Written Notices related to his work performance. Although the second of these Written Notices is currently being disputed by the grievant through the grievance procedure, the first Group II Written Notice charged the grievant with unsatisfactory performance, failure to follow instructions, and disruptive behavior. In addition, the grievant’s evidence regarding his evaluation consists largely of disagreement with management’s assessments. While the grievant clearly does not believe the agency’s assessment of his performance is warranted, this disagreement does not support an assertion that the performance evaluation was without a basis in fact or otherwise arbitrary or capricious. EDR has reviewed nothing in the grievance paperwork that would support a conclusion that the evaluation resulted from anything other than management’s reasoned review of the grievant’s performance in relation to established performance expectations. Accordingly, the grievant’s claim regarding his performance evaluation will not be qualified.

This grievance will proceed to hearing on the claims previously qualified by the agency. If it has not already done so, the agency is directed to submit to EDR a completed Form B within five workdays of this ruling. A hearing officer will be appointed in forthcoming correspondence. EDR’s qualification rulings are final and nonappealable.⁴



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⁴ Va. Code § 2.2-1202.1(5).