

Issues: Qualification – Compensation (Role Change and Position Classification);
Ruling Date: July 3, 2014; Ruling No. 2014-3892; Agency: Virginia Commonwealth
University; Outcome: Not Qualified.



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

QUALIFICATION RULING

In the matter of Virginia Commonwealth University
Ruling No. 2014-3892
July 3, 2014

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 February 21, 2014 grievance with Virginia Commonwealth University (the “University”) qualifies for a hearing. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

In 2012, the grievant was hired by the University as a Financial Services Specialist II, a Pay Band 5 position, with the work title of Grant and Clinical Trials Budget Analyst. On or about February 4, 2014, the grievant was issued a revised Employee Work Profile (“EWP”), which reclassified her Role to Financial Services Specialist I and moved her from Pay Band 5 to Pay Band 4. Her work title was changed to Pre-Award Research Specialist. The grievant’s salary remained the same.

The grievant’s reclassification was the result of an internal audit that assessed the functioning of the “administrative group . . . responsible for the oversight of operations, finances, timekeeping, and compliance.” The grievant’s work group is responsible for managing the fiscal operations of the University’s clinical research activities, and thus was reviewed as part of the audit. The report produced at the conclusion of the audit recommended that University management “review and assess the reporting structure” of the grievant’s work unit, “assess the effectiveness of the [reporting] structure[,] and align the reporting structure to be consistent with departmental operations.” The University was further tasked with “clearly defin[ing] employee roles” and working to “develop a more effective solution to sustain business operations” within the grievant’s work unit. The University determined that a reorganization of the grievant’s work unit was the most efficient way of implementing these recommendations. As a part of the reorganization, the grievant’s position was reclassified as described above and a new Pay Band 5 position with the Role of Financial Services Manager I and work title of Senior Research Manager was created to supervise the work unit.

On or about February 21, 2014, the grievant initiated a grievance to challenge the internal audit and the resulting modifications to her Role, Pay Band, and work title. The grievant asserts

that she was “[d]emoted without discussion or cause,” seeks to have her EWP rewritten to include the supervisory duties of the newly-created Financial Services Manager I position, and has requested to be restored to her former Pay Band and to have her salary increased. After proceeding through the management steps, the University President declined to qualify the grievance for a hearing.¹ The grievant now appeals that determination 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, by statute and under the grievance procedure, management is reserved the exclusive right to manage the affairs and operations of state government.³ Thus, claims relating to issues such as to the establishment or revision of wages, salaries, position classifications, or general benefits 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 The grievant has not alleged discrimination, retaliation, or discipline.⁵ Therefore, the grievant’s claims could only qualify for hearing based upon a theory that the University has misapplied or unfairly applied policy.

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 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, 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.⁶

¹ During the management resolution steps, the University offered to restore the grievant to her former Role title and Pay Band in return for her concluding the grievance. The University explained that it was unable to modify the grievant’s current job duties or salary. The grievant refused the University’s offer of relief.

² See *Grievance Procedure Manual* § 4.1.

³ See Va. Code § 2.2-3004(B).

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

⁵ Although the grievant asserts that she was reclassified in “retaliation for [the] [i]nternal [a]udit,” there is no evidence to suggest that she has engaged in any prior protected activity such that analysis of her claim as one of retaliation under the grievance procedure is warranted. See Va. Code § 2.2-3004(A); *Grievance Procedure Manual* § 4.1(b). Rather, it would appear that the grievant used the word “retaliation” to mean that her reclassification was the result of the internal audit, and this ruling will address her claim accordingly.

⁶ 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.

Furthermore, the grievance procedure generally limits grievances that qualify for a hearing to those that involve “adverse employment actions.”⁷ 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.”⁸ Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one’s employment.⁹

Even assuming, for purposes of this ruling only, that the reclassification constituted an adverse employment action,¹⁰ it does not appear that the internal audit and subsequent reorganization of the grievant’s work unit violated a mandatory policy provision or was without a reasoned basis. Indeed, EDR has been unable to identify any mandatory policy provision that the agency may have violated, and the grievant has cited to none. Likewise, the grievant has presented no evidence that the University’s actions were inconsistent with other decisions regarding reorganization and/or reclassification of positions or are otherwise arbitrary or capricious. Rather, it appears that the internal audit identified issues in the work unit’s reporting structure and recommended that they be corrected. In response, the University redefined and consolidated the job responsibilities of employees in the grievant’s work unit in a way that would more “clearly define employee roles” and aid in “develop[ing] a more effective solution to sustain business operations.” The reorganization reduced the volume and complexity of tasks for which the grievant was responsible under her former EWP and made corresponding modifications to her Role and work title. While the grievant is understandably concerned about these changes in her job, there is no basis for EDR to conclude that the University lacked a reasoned basis for its actions.

The grievant also claims that her former EWP was “posted for a new hire and [she] was demoted to be that individual’s employee.” Having reviewed information about the grievant’s former EWP, her current EWP, and the newly-created Financial Service Manager I’s EWP, it does not appear that this is the case. Prior to the reorganization, approximately 60% of the grievant’s core responsibilities consisted of pre-award research administration, budget development, and program administration tasks. Approximately 10% of her responsibilities consisted of supervision and performance management, and the remainder were made up of service rate, clinical trial agreement negotiation, and risk management. It appears that the University did not remove the grievant’s core responsibilities relating to pre-award research administration, budget development, and program administration responsibilities. The remainder of the grievant’s core responsibilities, however, were revised to consist of project development and proposal submission rather than supervision, service rate, clinical trial agreement

⁷ See *Grievance Procedure Manual* § 4.1(b).

⁸ *Burlington Indus. Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

⁹ *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007).

¹⁰ On the one hand, the grievant’s salary was not decreased as a result of the internal audit, so there has been no immediate adverse action. However, by reducing the grievant’s Pay Band, her salary ceiling has been reduced. Consequently, there is some basis to suggest that an adverse employment action has occurred. Ultimately, this issue need not be fully discussed in this ruling because the grievance would not otherwise qualify for a hearing.

negotiation, or risk management. In short, it does not appear that the University merely posted the grievant's former position for hiring and "demoted [her] to be that individual's employee," as many of the grievant's former responsibilities are the same as they were prior to the reclassification.

A review of the grievant's former and revised EWP's further indicates that, overall, the grievant's core job responsibilities have become less complex and varied than they were previously listed. The University created the Financial Services Manager I position to assume responsibility for these higher-level managerial tasks within the grievant's work unit. On the whole, it appears that the University's decision to reorganize the grievant's work unit was based on the findings of the internal audit. Additionally, the way in which the University implemented the reorganization was a reasonable method of addressing the issues with the work unit that were identified during the audit. As a result, the grievance does not raise a question as to whether the University's decision to redefine the grievant's job responsibilities to focus more closely on project development and pre-award research administration was a violation of a mandatory policy provision, that the University's actions were so unfair as to amount to a disregard of the intent of the applicable policy, or that the University's decision was otherwise arbitrary or capricious.

Furthermore, DHRM Policy 3.05, *Compensation*, specifically authorizes agencies to reduce an employee's Pay Band by means of a "Downward Role Change."¹¹ The policy provides that, in the case of a Downward Role Change, an employee's salary "remains unchanged unless it exceeds the maximum of the lower assigned Salary Range."¹² Here, the grievant's salary fell within Pay Band 4 and, when she was moved from Pay Band 5 to Pay Band 4, it was not modified. Based on a review of the job classification structure provided on DHRM's website, EDR can find no inconsistencies in classifying the grievant's position to her redefined Role of Financial Services Specialist I.¹³ The description provided for that Role appears to match the grievant's redefined job responsibilities more closely than her former Role. For example, the grievant's job duties, though they remain the same or similar in some respects, appear to be less complex overall, and her level of accountability for the operations of her work unit has decreased. The Financial Services Manager I position has been created to assume supervisory responsibility for the work unit. This realignment of job responsibilities within the grievant's work unit appears to be consistent with the agency's stated purpose for the internal audit and reclassification.

Although the grievant disagrees with the University's assessment of how best to redistribute her workload and reorganize her work unit, she has not raised a question as to whether the University misapplied and/or unfairly applied policy, acted in a manner that was inconsistent with other decisions regarding reorganization and/or reclassification of positions, or

¹¹ DHRM Policy 3.05, *Compensation*. A "Role Change" is defined as "[a] non-competitive action in which a position is changed to a different Role in a higher, lower or same Pay Band." *Id.*

¹² *Id.*

¹³ See <http://www.dhrm.virginia.gov/compensation/careergroups/admin/FinancialServices19030.htm> for further information about the Career Group to which the Financial Services Specialist and Financial Services Manager Roles are assigned, as well as general description of the complexity, results, and accountability for each Role.

was otherwise arbitrary or capricious. In summary, it appears that the agency's reclassification was executed properly under the discretion granted by policy. Accordingly, this grievance does not qualify for hearing.

EDR's qualification rulings are final and nonappealable.¹⁴



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¹⁴ See Va. Code § 2.2-1202.1(5).