

Issue: Qualification – Compensation (temporary/acting pay); Ruling Date: October 7, 2014; Ruling No. 2015-3989; Agency: Department of Corrections; Outcome: Not Qualified.



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

QUALIFICATION RULING

In the matter of Department of Corrections
Ruling Number 2015-3989
October 7, 2014

The grievant has requested a ruling on whether her August 1, 2014 grievance with the Department of Corrections (the agency) qualifies for a hearing. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

The grievant was formerly employed as an Administrative and Office Specialist II in the mailroom of one of the agency's offices. The grievant claims that from December of 2013 through June 9, 2014, she performed additional duties in the stockroom due to a vacant position, and was told she would be given additional compensation in return. Effective June 10, 2014, the grievant accepted another position within the agency. At that time, her supervisor sought a salary increase for her in order to match the competitive offer, but the requested increase was denied. Her supervisor then sought an upgrade for the grievant's position, but this process was never completed.

The grievant filed the August 1, 2014 grievance to challenge the denial of a salary increase for the duties she performed from December 2013 through June 9, 2014. During the management resolution steps, the third step respondent concluded that a bonus in the amount of \$600.00 was appropriate additional compensation for the grievant's extra duties for a six month period. The grievant received the \$600.00 on or about August 25, 2014, but argues that it is not adequate compensation given the fact that she was performing several duties in a higher pay band. The agency head ultimately determined that this grievance does not qualify for a hearing, and the grievant now appeals to EDR.

DISCUSSION

The grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.¹ Thus, by statute and under the grievance procedure, complaints relating solely to the establishment and revision of salaries, wages, and general benefits "shall not proceed to a hearing"² unless there is sufficient evidence

¹ See Va. Code § 2.2-3004(B).

² Va. Code § 2.2-3004(C).

of discrimination, retaliation, unwarranted discipline, or a misapplication or unfair application of policy. The grievant has not alleged discrimination, retaliation, or discipline. Therefore, the grievant's claims could only qualify for hearing based upon a theory that the agency 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. Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions."³ 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."⁴ Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one's employment.⁵ For purposes of this ruling only, it will be assumed that the grievant has alleged an adverse employment action in that she asserts issues with her compensation.

The primary policy implicated in this grievance is DHRM Policy 3.05, *Compensation*. This policy provides that agencies may provide a salary increase to an employee in the form of an in-band adjustment or an in-band bonus on the basis of change in duties, professional or skill development, retention, and internal alignment.⁶ Such pay practices 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.⁷ DHRM Policy 3.05 reflects the intent to invest agency management with broad discretion for making individual pay decisions and corresponding accountability in light of each of thirteen 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.⁸ Some of these factors relate to employee-related issues, and some to agency-related business and fiscal issues, but the agency has the duty and the broad discretion to weigh each factor for every pay practice decision it makes.

While we understand the grievant's concerns in this case, DHRM Policy 3.05 does not mandate that an employee be granted an in-band adjustment upon assuming new or additional tasks. The grievant has not identified, nor are we aware of, any specific policy requirement violated by the agency's actions in this instance. Here, the agency indicates that it assessed the

³ See *Grievance Procedure Manual* § 4.1(b).

⁴ *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

⁵ *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007).

⁶ DHRM Policy 3.05, *Compensation*.

⁷ See DHRM Human Resource Management Manual, Ch. 8, *Pay Practices*.

⁸ See DHRM Policy 3.05, *Compensation*.

additional tasks performed by the grievant for the time period at issue and determined that a one-time bonus payment of \$600.00 was the appropriate compensation for the work performed, as opposed to either an in-band salary adjustment or an upward role change for the grievant. The grievant did receive the \$600.00 bonus in consideration of the additional duties. 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. The question in this case is not whether the applicable policy might have supported an in-band adjustment to the grievant's salary while she was performing additional duties. The question is whether the applicable policy mandates that the grievant receive a salary increase, such that the agency's failure to provide an increase disregards the facts or is 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. The grievant's salary from December 2013 through June 2014, as reported by the agency, falls within both her assigned payband and the next higher payband, to which she alleges the additional duties belonged.⁹ Thus, we cannot find that the applicable policy mandates the grievant should have received a salary increase consistent with a role change to the next higher payband based on any additional duties, even if they appropriately belong to a role in a higher payband. Therefore, the grievant's claim of misapplication and/or unfair application of policy as outlined in her August 1, 2014 grievance does not qualify for a hearing.

EDR's qualification rulings are final and nonappealable.¹⁰



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⁹ See <http://www.dhrm.virginia.gov/compensation/SalaryStructure072513.pdf> for further information on the Commonwealth's pay bands.

¹⁰ Va. Code § 2.2-1202.1(5).