

Issue: Qualification – Compensation (other); Ruling Date: November 9, 2015; Ruling No. 2016-4253; Agency: Department of State Police; Outcome: Not Qualified.



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

**QUALIFICATION RULING**

In the matter of the Virginia State Police  
Ruling Number 2016-4253  
November 9, 2015

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) on whether his August 20, 2015 grievance with the Virginia State Police (the “agency”) qualifies for a hearing. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

In 2015, the General Assembly appropriated additional funding to the agency for the purpose of salary supplements, which were to be provided to agency employees in addition to the raise and compression adjustments applicable to all classified state employees.<sup>1</sup> In its enacting language, the General Assembly gave the agency broad discretion in determining how to distribute this money and required that the agency’s plan for doing so be approved by the Secretary of Public Safety and Homeland Security and submitted to the Chairmen of the House Appropriations and Senate Finance Committees of the General Assembly.<sup>2</sup> Consistent with this requirement, the agency developed a plan for addressing salary compression which was approved by the Secretary of Public Safety and Homeland Security and submitted to the appropriate Committees. In addition, the agency’s plan was approved by DHRM.

Under the plan, employees who had salaries in excess of designated maximums for their pay grades were not eligible to receive the agency-specific compression adjustment. According to the agency, the grievant was one of 79 sworn employees who were ineligible for the additional compressional adjustment on this basis.

In August 2015, the grievant became aware that although he had received the raise and compression adjustment applicable to all classified state employees, he was not awarded any additional agency compression adjustment. He initiated a grievance challenging this management action on August 20, 2015. After the parties failed to resolve the grievance during the resolution steps, the grievant asked the agency head to qualify the grievance for hearing. The agency head denied the grievant’s request and the grievant has appealed to EDR.

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<sup>1</sup> 2015 Va. Acts 466.

<sup>2</sup> *See id.*

## 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.<sup>3</sup> Additionally, by statute and under the grievance procedure, management is reserved the exclusive right to manage the affairs and operations of state government.<sup>4</sup> 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.<sup>5</sup> Fairly read, the grievance asserts that the agency's failure to grant the compression adjustment was a misapplication or unfair application of policy and constituted discrimination on the basis of age.

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions."<sup>6</sup> 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."<sup>7</sup> Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one's employment.<sup>8</sup> For purposes of this ruling only, EDR will assume that the denial of the compression adjustment was an adverse employment action.

### *Misapplication or Unfair Application of 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. In this case, the grievant appears to allege the agency's plan for distributing the additional allocated funds was inappropriate or unfair, in that he believes the maximum pay for his pay grade was set too low and does not adequately reflect the impact of his years of service. While EDR does not doubt the sincerity of the grievant's concerns, the General Assembly gave the agency great discretion in determining how the allocated funds should be distributed, and the distribution plan devised by the agency was approved by the Secretary of Public Safety and DHRM. Further, the grievant has not shown that the agency failed to act in accordance with its distribution plan in determining that he did not qualify for the compression adjustment, or that the agency's actions were otherwise arbitrary or capricious. For these reasons, this grievance does not qualify for hearing on this basis.

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<sup>3</sup> See *Grievance Procedure Manual* § 4.1.

<sup>4</sup> See Va. Code § 2.2-3004(B).

<sup>5</sup> *Id.* § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).

<sup>6</sup> See *Grievance Procedure Manual* § 4.1(b).

<sup>7</sup> *Burlington Indus. Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

<sup>8</sup> *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007) (citation omitted).

*Discrimination*

The grievant further asserts that the agency has engaged in age discrimination by declining to grant him the additional agency compression adjustment. Grievances that may be qualified for a hearing include actions related to discrimination on the grounds of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, genetics, disability, or veteran status.<sup>9</sup> In order for such a grievance to qualify for a hearing, it must present facts that raise a sufficient question as to whether the actions described within the grievance were the result of prohibited discrimination based on a protected status. If, however, the agency provides a legitimate, nondiscriminatory business reason for its action, the grievance will not be qualified for a hearing, absent sufficient evidence that the agency's professed business reason was a pretext for discrimination.<sup>10</sup>

In this case, there are no facts to indicate that the agency's distribution of the compression adjustment was discriminatory. To qualify for a hearing, a grievance must present more than a mere allegation of discrimination – there must be facts that raise a sufficient question as to whether the actions described within the grievance were the result of prohibited discrimination based on a protected status. There are no such facts here, and the grievance does not qualify for a hearing on this basis.

EDR's qualification rulings are final and nonappealable.<sup>11</sup>



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<sup>9</sup> See *Grievance Procedure Manual* § 4.1(b); see also Executive Order 1, *Equal Opportunity* (2014); DHRM Policy 2.05, *Equal Employment Opportunity*.

<sup>10</sup> See *Hutchinson v. INOVA Health Sys., Inc.*, C.A. No. 97-293 A, 1998 U.S. Dist. LEXIS 7723, at \*3-4 (E.D. Va. Apr. 8, 1998).

<sup>11</sup> See Va. Code § 2.2-1202.1(5).