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RECONSIDERED QUALIFICATION RULING

In the matter of the Department of Corrections
Ruling Number 2020-5039
January 21, 2020

The grievant has requested that the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management¹ reconsider its qualification determination in Ruling Number 2020-5012, which held that the grievant’s August 14, 2019 grievance does not qualify for a hearing.² For the reasons discussed below, EDR finds no error with the initial qualification determination.

The grievant’s August 14, 2019 grievance challenges the agency’s decision to reassign supervisory responsibility for her unit to another manager without either competitively recruiting for the position or reassigning that responsibility to the grievant based on her skill and experience. The grievant further alleges that the new manager of the unit used her position “to harass [the grievant] and threaten [her] because [the new manager] lacks the competency to perform the position in which she was placed.” Finally, the grievant argues that the agency decided not to assign supervisory authority for the unit to her because of her race and/or disability status. In EDR Ruling Number 2020-5012, this Office determined that the grievance did not qualify for a hearing. The grievant has submitted a request for reconsideration, disputing EDR’s analysis and conclusions regarding her claim of discrimination.

EDR does not generally reconsider its qualification rulings and will not do so without sufficient cause. For example, EDR might reconsider a ruling containing a mistake of fact, law, or policy where the party seeking reconsideration has no opportunity for appeal. However, there must be clear or convincing evidence of such a mistake for reconsideration to be appropriate.³

¹ The Office of Equal Employment and Dispute Resolution has separated into two office areas: the Office of Employment Dispute Resolution and the Office of Equity, Diversity, and Inclusion. While full updates have not yet been made to the *Grievance Procedure Manual* to reflect this change, this Office will be referred to as “EDR” in this ruling. EDR’s role with regard to the grievance procedure remains the same.

² See EDR Ruling No. 2020-5012.

³ See EDR Ruling Nos. 2010-2502, 2010-2553 n.1.

In her request for reconsideration, the grievant alleges that “the agency has given misleading information to the EDR . . . in its effort to continue the pretext for discrimination” that is the subject of her grievance. The grievant has further explained she is not challenging the agency’s reorganization of her department as a whole, but rather its allegedly discriminatory decision to reassign supervisory responsibility for the grievant’s unit to the new manager. As support for her allegation of discrimination, the grievant reiterates her original arguments that the the new manager was less qualified than the grievant and that the agency improperly approved an in-band salary adjustment for the new manager in conjunction with the reorganization. The grievant essentially argues that, when considered in conjunction with the in-band adjustment, the reassignment of supervisory duties to the new manager amounted to a de facto promotion that was inconsistent with policy because the agency did not competitively recruit for the job. In conclusion, the grievant contends that there was “no solid or substantial basis in personnel practice or principle” for reassigning supervisory responsibility for the grievant’s unit to the new manager instead of the grievant, and thus a discriminatory motive is the only reasonable explanation for the agency’s actions. Finally, the grievant claims that the department’s assistant director, who was the grievant’s former supervisor prior to the reorganization, in fact competed for a promotion prior to the reorganization and did not transfer into that position as described by EDR.⁴

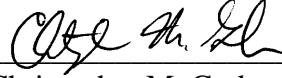
Before issuing the original qualification ruling, EDR thoroughly reviewed the grievance record and considered the parties’ arguments about these issues. Unless there is evidence raising a sufficient question as to whether discrimination, retaliation, or discipline may have improperly influenced management’s decision, or whether state policy may have been misapplied or unfairly applied, a grievance challenging issues such as the ones presented in this case will not qualify for a hearing.⁵ EDR Ruling Number 2020-5012 found that there was insufficient evidence to raise a sufficient question as to any of the claims raised to qualify for a hearing. With regard to the issue of discrimination specifically, EDR concluded that the agency had demonstrated legitimate, nondiscriminatory business reasons for its decision to reassign management of the grievant’s unit to the new manager based on her knowledge, skills, and abilities, including the breadth and depth of her human resources experience and performance with the agency. Even accepting the grievant’s arguments regarding the assistant director’s promotion as true, EDR finds no basis to conclude that any alleged error in its description of the assistant director’s position were material to the issues raised in the grievance. Indeed, as the grievant herself acknowledges and argues, the primary management action issue is the agency’s allegedly discriminatory reassignment of the supervisory duties to the new manager, not the agency’s treatment of the assistant director.

EDR has carefully considered the grievant’s request for reconsideration and concludes that she has submitted no information that would alter EDR’s findings relating to her claim of discrimination. There are no grounds to reconsider or change the analysis of these underlying issues, as set forth in EDR Ruling Number 2020-5012. While the grievant may disagree with EDR’s prior ruling, she has presented an insufficient basis in her request for reconsideration to support that a mistake of fact, law, or policy led to an incorrect result. For these reasons, the grievant’s request for reconsideration is denied and the determinations made in EDR Ruling

⁴ See EDR Ruling No. 2020-5012 at 2, 3-4.

⁵ Va. Code § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).

Number 2020-5012 stand as originally issued. EDR's rulings on matters of qualification are final and nonappealable.⁶



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⁶ Va. Code § 2.2-1202.1(5).