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QUALIFICATION RULING

In the matter of the Virginia Department of Corrections
Ruling Number 2020-5109
June 22, 2020

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management¹ on whether his December 30, 2019 grievance qualifies for a hearing. For the reasons discussed below, the grievance does not qualify for a hearing.

FACTS

The grievant is currently employed as a Senior Counselor at one of the agency’s correctional facilities. On or about December 6, 2019, the grievant submitted an application for an open assistant warden position at the facility where he works. The grievant initiated his grievance on or about December 30, 2019 after learning that the agency did not select him to interview for the position despite his qualifications. In his grievance, the grievant contends that the agency failed to properly consider his military experience in its applicant screening process, and he requested to be reconsidered.² The agency maintains that the grievant did not meet two minimum qualifications for the position: “extensive and progressive security management experience in corrections or law enforcement” and “extensive experience in the supervision of corrections staff.”³ Following the management resolution steps, the agency head determined that the grievance did not qualify for a hearing. The grievant now appeals that determination to EDR.

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 It appears that the agency ultimately cancelled the competitive selection process for which the grievant submitted his application, instead using the open position to re-assign personnel from another facility that had just closed.

³ While the grievant does not appear to assert that the agency should have applied a veteran’s preference to his application, the agency has explained that it would apply such preference only if an applicant met the minimum requirements for the position as posted. Here, the agency determined that the grievant did not meet all of the minimum requirements. *See also* DHRM Policy 2.10, *Hiring*, Policy Guide – Veteran’s Preference (providing that at initial screening, “[a]pplicants are screened to identify those who meet the minimum requirements for the position No preference is given.”)

DISCUSSION

By statute and under the grievance procedure, complaints relating solely to issues such as the hiring, promotion, transfer, assignment, and retention of employees within the agency “shall not proceed to a hearing” unless there is sufficient evidence of discrimination, retaliation, unwarranted discipline, or a misapplication or unfair application of policy.⁴ Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve an “adverse employment action.”⁵ Typically, then, 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.”⁶ Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one’s employment.⁷ For purposes of this ruling only, EDR will assume that the grievant has alleged an adverse employment action, in that it appears the position he applied for would have been a promotion.

In this case, the grievant essentially asserts that the agency misapplied and/or unfairly applied policy when it did not select him to interview for the assistant warden position. 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 applicable policy.

State hiring policy is designed to ascertain which candidate is best suited for the position, not just to determine who might be qualified to perform the duties of the position.⁸ Further, it is the Commonwealth’s policy that hiring and promotions be competitive and based on merit and fitness.⁹ DHRM Policy 2.10, *Hiring*, provides that agencies may screen applications to reduce the initial applicant pool for a position. Screening must proceed according to “the minimum qualifications established for the position” but may also include consideration of “appropriate preferred job-related qualifications,” provided the criteria are “applied consistently to all applicants.”¹⁰ The grievance procedure accords significant deference to management’s exercise of judgment, including management’s assessment of an applicant and their experience during a selection process. Thus, a grievance that challenges an agency’s action like the selection process at issue in this case does not qualify for a hearing unless there is sufficient evidence that the resulting determination was plainly inconsistent with other similar decisions by the agency or that the assessment was otherwise arbitrary or capricious.¹¹

⁴ Va. Code § 2.2-3004(C); see *Grievance Procedure Manual* §§ 4.1(b), (c).

⁵ *Grievance Procedure Manual* § 4.1(b)

⁶ *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

⁷ *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007) (citation omitted).

⁸ See DHRM Policy No. 2.10, *Hiring*, at 21; Department of Corrections Operating Procedure (“OP”) 102.2, *Recruitment, Selection and Appointment*, at 5 (stating that the agency “makes employment decisions based on an individual’s merits, qualifications, eligibility, and *suitability*” for the position (emphasis added)).

⁹ Va. Code § 2.2-2901 (“In accordance with the provision of this chapter all appointments and promotions to and tenure in positions in the service of the Commonwealth *shall be* based upon merit and fitness, to be ascertained, as far as possible, by the competitive rating of qualifications by the respective appointing authorities.” (Emphasis added.))


¹⁰ DHRM Policy 2.10, *Hiring*, at 7.

¹¹ See *Grievance Procedure Manual* § 9 (defining arbitrary or capricious as “[i]n disregard of the facts or without a reasoned basis”).

In this case, the grievant contends that he “more than met the qualifications” for the assistant warden position, based in part on his educational background and his military experience. While the job required a high school diploma or equivalent, the grievant’s application reflects that he holds bachelor’s and master’s degrees. His application also details military service in the United States Army and Maryland Army National Guard, which included “supervisory experience at the Officer level.” Thus, he contends that the agency’s screening process failed to properly account for his qualifications and, as a result, excluded him from the interview pool.

However, the agency determined that the grievant did not meet two minimum qualifications identified in the job posting for assistant warden: (1) “extensive and progressive security management experience in corrections or law enforcement” and (2) “extensive experience in the supervision of corrections staff.” By contrast, the individuals recommended for interviews held corrections positions of unit manager or higher (e.g. corrections majors, chiefs of housing and programs).¹² While the grievant may reasonably view his supervisory experience in the military as readily transferable to the minimum qualifications for the assistant warden position,¹³ the agency’s screening staff also reasonably noted that the grievant “has not had experience as a supervisor in the [agency].” Ultimately, the agency was entitled to prioritize direct management experience in corrections or law enforcement and supervision of corrections staff over related experience in other contexts, and to limit interviews to the candidates whose applications most clearly demonstrated that direct experience. Agency decision-makers deserve appropriate deference in determinations regarding a candidate’s knowledge, skills, and abilities. As a result, 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 are otherwise arbitrary or capricious. Here, while the grievant’s application may have reflected many of the minimum and preferred qualifications for the assistant warden position, EDR can find nothing to indicate that the grievant was so clearly one of the most competitive candidates that the screening process disregarded the facts or was anything other than a reasonable exercise of discretion based on a good-faith assessment of which candidates might be most suitable for the position, based on their application information. Accordingly, the grievance does not qualify for a hearing.

EDR’s qualification rulings are final and nonappealable.¹⁴



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¹² While a position title is not, by itself, a basis for offering or denying an applicant an interview, a candidate’s current position may be a valid indicator of their experience, level of responsibility, and other job-related qualifications. *See, e.g.*, EDR Ruling No. 2020-5100.

¹³ To support his qualifications for the assistant warden position, the grievant also alleges that another agency facility invited him to interview for a different position in the same pay grade as assistant warden. However, without more, EDR cannot say that a different selection process for a different position would suggest that the process challenged here was plainly inconsistent with other similar decisions by the agency or was otherwise arbitrary or capricious.

¹⁴ Va. Code § 2.2-1202.1(5).