

Issue: Qualification/Recruitment/Selection; Ruling Date: July 26, 2002; Ruling #2001-203; Agency: Department of Mental Health, Mental Retardation and Substance Abuse Services; Outcome: qualified.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Mental Health, Mental Retardation
and Substance Abuse Services
Ruling Number 2001-203

July 26, 2002

The grievant has requested a ruling on whether her August 31, 2001 grievance with the Department of Mental Health, Mental Retardation and Substance Abuse Services qualifies for a hearing. The grievant claims that management misapplied policy during the selection process. For the reasons discussed below, this grievance qualifies for hearing.

FACTS

The grievant is employed as an Administrative and Program Specialist II (with the working title of Unit Secretary) at one of the agency's mental health facilities. In July 2001, the grievant applied for a position as a Personnel Assistant, Administrative and Program Specialist III, Pay Band 3 (Executive Secretary). At least 49 other candidates also applied for the position. In determining which applicants would be selected for interviews, the agency ranked the candidates according to seven screening criteria. The selected criteria called for strengths in (1) education, (2) experience as a professional secretary, (3) knowledge of office practices and procedures, (4) grammar, spelling and writing skills, (5) typing, computer, database, spreadsheet, and timekeeping scheduling software, (6) shorthand or transcription skills, and (7) professional secretarial experience in a medical setting. Candidates were ranked on the criteria using a system of check pluses and minuses, with a minus sign indicating the lowest rating and a check with one or more pluses as the highest. Reference letters were not requested of the candidates until the interview stage of the process. The grievant was granted an interview, but was not selected for the position. During the interview, candidates were asked the question, "what is your interest in the position and why are you applying for it in particular?"

DISCUSSION

The grievance procedure recognizes management's exclusive right to manage the operations of state government, including the hiring or promotion of employees within an agency.¹ Inherent in this right is the authority to weigh the relative qualifications of job

¹ See Va. Code § 2.2-3004 (B).

applicants and determine the “best-suited” person for a particular position based on the knowledge, skills and abilities required. Grievances relating solely to the contents of personnel policies and the hiring of employees within an agency “shall not proceed to a hearing.”² Accordingly, a grievance challenging the selection process does not qualify for a hearing unless there is evidence raising a sufficient question as to whether the selection process was tainted by discrimination, retaliation, discipline, or a misapplication of policy.³ In this case, the grievant has alleged that the agency misapplied or unfairly applied policy during the selection process by interviewing and selecting a candidate for the position who did not meet the advertised criteria, and by failing to select her as the more qualified candidate for the position. She also questions the propriety of the final interview question.

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. It is the Commonwealth’s policy that hiring and promotions be competitive and based on merit.⁴ Consistent with that overall policy, DHRM’s Hiring Policy No. 2.10 specifically requires that “[s]creening must be done according to the qualifications established for the position and applied consistently to all applicants. During the screening process, agencies must not consider ... non-KSA information.” Further, interview questions “should seek information related to the applicant’s knowledge, skills and abilities to perform the job.”⁵ In this case, the agency established the criteria for the position, determining that very high levels of relevant job skills and experience were necessary. We are therefore compelled to examine whether these high criteria were applied properly and consistently to all candidates.

Management appears to maintain that the selected candidate fully possesses the “extensive” experience called for by the KSAs of the position. However, a review of the undisputed evidence raises several points that warrant further examination through the administrative hearing process:

Criterion #1. Prefer Associate’s Degree in Secretarial Science or demonstrated equivalent in education and experience.

The selected candidate does not possess an Associate’s degree; she lists 2 ½ years of full time secretarial work experience and 10 months of part-time experience. The

² Va. Code § 2.2-3004 (C).

³ *Grievance Procedure Manual*, § 4.1 (b) and (c), pages 10-11.

⁴ The prevailing statute is Virginia Code § 2.2-2900, which states, in part, that “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).

⁵ DHRM Hiring Policy No. 2.10, pages 6-7 of 14 (rev. 3/01/01); *see also* [the mental health facility] Policy No. 6001, page 2, #7&8.

grievant received an Associate's degree in Data Processing in 1986, and lists approximately 13 years of full and part time experience in administrative support.

Criterion #2. Experience as a professional secretary with extensive experience in multiple areas of general office procedures and administration.

The selected candidate's work experience does not appear to meet this "extensive" requirement. The selected candidate's application does not demonstrate a wide variety of experience. For example, she has not served as an administrative secretary, she has not had experience as an officer manager or as a secretary in a medical office, and has only 2 ½ years of full time secretarial experience. As stated, the grievant's application lists 13 years of full time and part time administrative support experience in psychiatric hospitals, including her current position as Unit Secretary where, for example, she lists experience in data processing, timekeeping, and scheduling and coordinating patient activities for multiple offices and disciplines.

Criterion #5. Considerable skill in typing ...[and] timekeeping scheduling software.

The selected candidate received a typing speed score of 62 words per minute with 25 errors. This Department's inquiry with the Virginia Employment Commission (VEC)—the entity that conducted the typing speed tests for the agency—yielded the response that 25 errors on the typing test unquestionably does not reflect "considerable skill in typing." The grievant typed 70 words per minute with 7 errors, which the VEC reported to be reflective of "considerable" typing skill. In addition, the selected candidate did not list any experience with "timekeeping scheduling software," while the grievant states that she has considerable experience with the "Kronos" scheduling system used at the facility.

Criterion #7. Prefer previous professional secretary experience in a medical office setting or professional secretary experience to a Hospital Medical Staff.

The selected candidate lists 2 ½ years of work experience, none of which was in a medical setting. As stated, the grievant's application lists approximately 13 years of administrative support work in psychiatric hospitals, including her current position as Unit Secretary where she provides administrative support for multiple offices and disciplines within the facility.

Finally, the grievant claims that the agency misapplied policy by asking interviewed candidates to identify their interest in the position and the particular reason they applied for it, which she asserts is not based on the KSAs required for the job. In the resolution steps, management responded that this question was "a standard question ... designed to seek information about an applicant's motivation," adding that the question does not promote any form of prohibited discrimination.⁶ DHRM Hiring Policy No. 2.10

⁶ Third resolution step response, dated September 11, 2001, page 2.

states that the interview questions “should seek information related to the applicant’s knowledge, skills, and abilities to perform the job;” however, under that policy, only questions “that are not job related or that violate EEO standards” are impermissible.⁷ The interview question at issue here is clearly job related and there is no evidence that it in any way violated EEO standards. Accordingly, the use of this question does not violate policy.

Nevertheless, when all of the points above regarding the application of the criteria to the candidates are viewed collectively, they raise a sufficient question as to whether the agency misapplied policy by granting an interview, and later the position, to an applicant who did not appear to possess the advertised qualifications for the position. Accordingly, the issue of whether the hiring policy was misapplied or unfairly applied is qualified for hearing and a further development of the facts.

CONCLUSION

For information regarding the actions the grievant may take as a result of this ruling, please refer to the enclosed sheet. Please also note that our qualification ruling is not a determination that the agency misapplied or unfairly applied policy. Rather, this ruling simply reflects that there is a sufficient question as to whether a misapplication or unfair application occurred, and that further review by a hearing officer is necessary.

Importantly, in reaching a decision, the hearing officer may not substitute his or her judgment for that of the agency concerning the relative merits of the candidates. For example, he or she may not determine who was best qualified or best suited to the position, or order that an agency hire an employee for a position nor transfer an employee to a particular position. If a misapplication of the selection policy is found, the hearing officer can only order the agency to (1) repeat the selection process from the point at which policy was misapplied; and/or (2) take corrective actions to prevent the reoccurrence of the violation(s).⁸

Claudia T. Farr
Director

⁷ See DHRM Hiring Policy No. 2.10, page 7 or 14 (rev. 3/01/01); see also [the mental health facility] Policy No. 6001, page 2, #7 & 8.

⁸ See *Grievance Procedure*, § 5.9; pages 15-16; see also *Rules for Conducting Grievance Hearings*, pages 14-15.