

Issue: Qualification-Recruitment/Selection; Ruling Date: February 20, 2002; Ruling #2001-229; Agency: Department of Corrections; Outcome: Not qualified.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Corrections
Ruling No. 2001-229

February 20, 2002

The grievant has requested a ruling on whether her September 14, 2001 grievance with the Department of Corrections (“agency”) qualifies for a hearing. She claims that she was denied the opportunity to interview for a job vacancy because the agency did not screen the applications per the advertised criteria. For the reasons set forth below her grievance is not qualified for hearing.

FACTS

The grievant is employed by the agency as an Administrative and Program Specialist III. In August of 2001, the agency advertised a vacancy for a Personnel Assistant, Administrative and Program Specialist III, Pay Band 3. The grievant claims that she was not given the opportunity to interview due to a misapplication of policy during the screening process. She asserts that the advertised criteria was not applied equally to all applicants for the position, specifically that current human resource experience was emphasized when the position advertisement had no such requirement. Further, the grievant claims that she met the advertised criteria more closely than other applicants who were granted an interview.

On August 15, 2001, the first of two days in which interviews were to be conducted, the grievant found out she would not be interviewed and notified the human resource officer of her concern. The grievant was informed that she did not meet the necessary qualifications and was not granted an interview. At the conclusion of the selection process another applicant was chosen for the position. The grievant filed her Grievance Form A on September 14, 2001 and after being denied qualification by the agency head, requested a ruling from this Department. For purposes of this ruling, the agency provided this Department with each candidate’s application, screening notes, and the interviewers’ evaluations, all of which were carefully reviewed.

DISCUSSION

By statute and under the grievance procedure, management has the authority to determine who is best-suited for a particular position by determining the knowledge, skills, and abilities necessary for the position and by assessing the qualifications of the candidates. Accordingly, claims relating to a selection process 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 the process, or whether policy may have been misapplied.¹ The grievant essentially alleges that the agency: (1) misapplied policy by failing to screen according to advertised criteria, and (2) unfairly interviewed applicants that did not meet the screening criteria.

The applicable policy is the Department of Human Resource Management (“DHRM”) Policy 2.10. The Commonwealth’s 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.² Policy 2.10 states that “Job announcements may include. . . a requirement for related experience.” Further, screening must be done according to the qualifications established for the position and applied consistently to all applicants.³

The grievant claims that the human resource officer informed her that screening was conducted using the criteria listed in the position advertisement. The grievant asserts that the advertised position required only “personnel experience” and that the agency violated policy when it added to the screening criteria that such experience must be “recent.” While Policy 2.10 stipulates that “requiring specific years of experience is prohibited,” there is no prohibition against the agency giving additional weight to “recent” experience during the screening process. Furthermore, because of the constantly changing workplace environment, recent experience could reasonably be viewed as more valuable than experience significantly in the past. Because the agency favored “recent” experience with *all* applicants there is no violation of policy.

Further, the grievant asserts that applicants were interviewed who did not meet the advertised criteria. This Department’s review of the human resource officer’s screening notes finds that equal attention was given to each applicant, with one notable exception. One applicant who was screened in and given an interview clearly did not meet the advertised criteria. With respect to this error, management conceded that the human resource officer improperly screened in an applicant who was subsequently interviewed but did not possess the required qualifications. Therefore, from the undisputed facts, it appears that policy was violated when an unqualified applicant was screened in and given an interview.⁴ However, this violation of policy was not the cause of the agency’s decision not to interview the grievant. Neither the improperly screened applicant nor the grievant met the qualifications for the position, and neither was selected to fill it.

In very rare circumstances, a grievance may not qualify for hearing even when an agency has failed to strictly follow the provisions of policy. This is such a case. This ruling does not stand for the premise that an agency can violate policy with impunity. To the

¹ See Va. Code § 2.2-3004(A); *Grievance Procedure Manual* § 4.1, pages 10-11.

² DHRM Policy No. 2.10, page 2 of 13 (revised March 1, 2001).

³ *Id.* at page 6 of 13.

⁴ See Third Step Response dated November 6, 2001, which ruled that this grievance was “founded.”

contrary, only in exceptional circumstances will undisputed misapplications of policy not result in qualification. But here the deviation from policy did not effect the outcome of the selection process. It should be noted that management acknowledged this error during the grievance process, apologized for any ill effect the error had on the grievant⁵ and immediately implemented steps to see that such an error would not occur again.⁶

Moreover, a hearing officer would be unable to award any meaningful relief if this Department qualified the grievance for hearing. Once a hearing officer concludes that a misapplication or unfair application of policy has occurred, the hearing officer can only "order the agency to reapply the policy from the point at which it became tainted."⁷ In this case, that would mean re-conducting the screening process and taking steps to ensure that the hiring process is conducted correctly in the future. To re-screen the applicants would result in the applicant who was erroneously interviewed being screened out of the interview process, not the grievant being screened in. Furthermore, the agency has already instituted steps to see that this problem does not occur in the future. Thus, the facts, taken as a whole, do not warrant qualification of this grievance for hearing.

APPEAL RIGHTS AND OTHER INFORMATION

For information regarding the actions the grievant may take as a result of this ruling, please refer to the enclosed sheet. If the grievant wishes to appeal this determination to the circuit court, she should notify the human resources office, in writing, within five workdays of receipt of this ruling. If the court should qualify this grievance, within five workdays of receipt of the court's decision, the agency will request the appointment of a hearing officer unless the grievant notifies the agency that she does not wish to proceed.

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⁵ There appears to have been no ill effect on the grievant with the possible exception of the creation of an appearance of unfairness.

⁶ See Second Step Response dated 10/23/01.

⁷ *Rules for Conducting Grievance Hearings*, page 10.