

Issue: Qualification/Recruitment/Selection; Ruling Date: March 1, 2002; Ruling #2001-234; 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/ No. 2001-234
March 1, 2002

The grievant has requested a ruling on whether his November 3, 2001 grievance with the Department of Corrections (DOC or the agency) qualifies for a hearing. He claims that he was wrongly denied an interview for a position within the agency. For the reasons set forth below, his grievance does not qualify for a hearing.

FACTS

DOC employs the grievant as a Corrections Officer. In September 2001, the agency advertised a vacancy for a Sergeant's position at another DOC facility. The grievant received his application back along with a letter dated October 3, 2001 with the box "Position was open to Department of Corrections employees only" checked and signed by the personnel assistant.

It is undisputed that the grievant called the personnel assistant on October 12, 2001 and informed her that he was a DOC employee and, therefore, should not have been screened out of the applicant pool. The grievant states that he spoke with both the personnel assistant and her supervisor and that he was informed that they might have made a mistake and that they offered an apology if they indeed erred. The parties differ as to what happened next. The grievant states that he was told he could apply for future openings. Both human resource employees claim that after they acknowledged that a mistake *might* have occurred, they suggested that the grievant fax his application back to the human resources department. Upon receipt of the application showing that the grievant was a DOC employee, they would ensure that the application was screened in and he would be set up for an interview, which were scheduled to begin the following Monday. The grievant denies that such an offer was made. Interviews were held and a successful candidate was chosen on October 25, 2001.

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 In this case, the grievant alleges that he has been discriminated against by not being recognized as a DOC employee and that the selection policy has been misapplied or unfairly applied.

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. State hiring policy allows the agency to: (1) interview all applicants for an advertised position, or (2) reduce the applicant pool by screening applications. This screening must be done according to the qualifications established for the position and applied consistently to all applicants.²

In this case, the grievant notified the hiring authority that a mistake had been made in the screening process and the hiring authority subsequently apologized. The agency claims that it instructed the grievant to re-submit his application but he did not do so.³ During the course of the investigation for this ruling, this Department repeatedly requested a copy of the original application from the grievant. He elected not to provide it, however. The requested documentation could have shown whether the grievant's original application indicated that he was a DOC employee. Without such evidence to substantiate his claim, this Department can conclude only that the grievant has not provided sufficient evidence that the agency misapplied policy. Accordingly, this grievance does not qualify for a hearing.⁴

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, he 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

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

² DHRM Policy No. 2.10, effective 03/01/01, page 6 of 13. See also DOC Policy 5-7 "Recruitment, Selection, and Appointment," § 5-7.11.

³ The reason that the agency asked the grievant to provide a copy of the original application is because the agency routinely returns to an applicant any application that does not meet minimum screening criteria.

⁴ Although the grievant refers to the alleged misapplication or unfair application of policy as "discrimination" in his grievance, he has not claimed disparate treatment on the basis of his race, color, religion, political affiliation, age, disability, national origin or sex. For a claim of discrimination to qualify for a hearing, an employee must come forward with some evidence that an adverse action has been taken against him because of his membership in one of these protected classes. *Grievance Procedure Manual*, § 4.1(b)(2) page 10. Accordingly, discrimination as defined by the grievance procedure is not at issue here and, thus, does not qualify for a hearing.

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appointment of a hearing officer unless the grievant notifies the agency that he does not wish to proceed.

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