

Issue: Qualification/Recruitment/Selection; Ruling Date: June 18, 2003; Ruling #2003-055; Agency : Virginia Department of Transportation; Outcome: not qualified



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Transportation
Ruling Number 2003-055
June 18, 2003

The grievant has requested a ruling on whether his October 4, 2002 grievance with the Department of Transportation (VDOT) qualifies for a hearing. The grievant claims that the agency has misapplied or unfairly applied policy by removing his name from the list of recommended applicants for a position as an Engineering Technician I, and denying him a proper explanation for his nonselection. As relief, he has requested to review his interview package "to see if [he] was selected" for one of the positions. For the following reasons, this grievance does not qualify for a hearing.

FACTS

The grievant is employed as a Trades Technician III. On June 17, 2002, he was interviewed for one of three Engineering Technician I positions, but was not selected. The grievant claims, however, he was told by a reliable source, that the interview panel had recommended him for one of the positions but that the District Human Resources Office had subsequently removed his name from the recommended list. Consequently, the grievant requested selection documents to determine the accuracy of that information.

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 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 discrimination, retaliation, discipline, or a misapplication of policy tainted the selection

¹ See Va. Code § 2.2-3004(B).

² Va. Code § 2.2-3004 (C).

process.³ In this case, the grievant claims that VDOT misapplied or unfairly applied selection policy.

Misapplication/Unfair of Policy

For an allegation of misapplication or unfair 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. 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.⁴ Interviews are mandatory⁵ and may be conducted by the hiring authority, persons designated by the hiring authority, or a panel. If used, panel members should make their recommendation regarding their choice of applicants to the hiring authority.⁶

The hiring authority in this instance was the Williamsburg Resident Engineer, who received the panel's recommendations for selection directly. The Resident Engineer approved the panel's recommendations and states that he forwarded the final results to the District Human Resources Office for administrative review and processing. Accordingly, that Office had no active role in the selection process or its outcome. The grievant has failed to provide evidence to support his claim that the Human Resources Office took any action to remove his name from the list of recommended applicants. To the contrary, the evidence shows that the grievant was never selected by the panel.⁷

As regards the grievant's claim that he was not provided an explanation for his nonselection, policy does not mandate that feedback be provided to unsuccessful applicants. Although it is a sound personnel practice to inform applicants of their status, the failure to do so does not constitute a misapplication of policy. In this instance, the agency notified the grievant of his nonselection by letter on September 4, 2002. Additionally, he was provided a copy of his personal Interview Summary during the first respondent step.¹

Although the grievant did not specifically request a compliance ruling, he noted, in the section of the Form A reserved for comments to the agency head's qualification decision, that the agency had failed to provide documents he requested related to his grievance. The grievance statute provides that absent just cause, all documents, as defined in the Rules of the Supreme Court of Virginia, relating to actions grieved shall be made available, upon request from a party to the grievance, by the opposing party (Va. Code § 2.2-3003 (E); Grievance Procedure Manual, § 8.2, page 21). This Department's interpretation of the mandatory language "shall be made available" is that absent just cause, all relevant grievance-related information *must* be provided. However, the

³ *Grievance Procedure Manual*, § 4.1 (c), page 10.

⁴ Department of Human Resource Management (DHRM) Policy No. 2.10, page 2 of 13.

⁵ DHRM Policy 2.10 page 7 of 13.

⁶ Department of Human Resource Management (DHRM) Policy No. 2.10, pages 6 and 7 of 13.

⁷ See Grievant's Interview Summary indicating that the grievant was not selected.

grievance procedure also requires both parties to address procedural noncompliance through a specific process. That process assures that the parties first communicate with each other about the purported noncompliance, and resolve any compliance problems voluntarily without this Department's involvement. Specifically, the party claiming noncompliance must notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance. If the alleged non-compliance is not corrected, then and only then, may the opposing party request a compliance ruling from this Department.

In this case, the grievant does not appear to have contacted the agency head nor has requested a compliance ruling from this Department. Thus, it would not be appropriate for this Department to rule on the issue of the documents. If the grievant appeals this qualification decision to circuit court, he may request that the court order the production of relevant documents for purposes of the court's qualification hearing, and the court may grant or deny that request.

APPEAL RIGHTS AND OTHER INFORMATION

For the reasons discussed above, this grievance does not qualify for a hearing. 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, the grievant 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 wishes to conclude the grievance and notifies the agency of that desire.

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Director

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