

Issue: Qualification/Compensation/Leave; Work Conditions/ Supervisory Conflict;  
Ruling Date: July 23, 2003; Ruling #2003-082; Agency: Department of Motor Vehicles;  
Outcome: not qualified.



*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Motor Vehicles/ No. 2003-082  
July 23, 2003

The grievant has requested a ruling on whether her December 3, 2002 grievance with the Department of Motor Vehicles (DMV) qualifies for a hearing. The grievant claims that (1) DMV has misapplied state and agency compensation policy and (2) her supervisor has harassed her. For the following reasons, this grievance does not qualify for a hearing.

FACTS

The grievant is an Administrative and Office Specialist III with DMV.<sup>1</sup> The grievant claims that for the past three years, she has been working outside of her job classification. Specifically, the grievant claims that she has been performing the duties of her supervisor<sup>2</sup> and has taken on additional responsibilities, including the planning of a traffic safety conference, nonprofit training, and the production of a newsletter.<sup>3</sup> In her grievance, the grievant listed several of her responsibilities over the past three years, claiming that, based on these duties, she should be classified in the Program Administration Career Group.<sup>4</sup> In addition to her classification claim, the grievant asserts that her salary is \$1800 below that of other Administrative and Office Specialist IIIs in her office and should be adjusted as a matter of internal alignment.

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<sup>1</sup> The grievant's EWP and Form A refer to the grievant's position as an "Administrative & Program Specialist III." However, her Role Code matches that of "Administrative & Office Specialist III" in the Department of Human Resource Management's (DHRM) Administrative and Office Support Career Group. See [www.dhrm.state.va.us/services/compens/careergroups/AdminOfficeSupport19010.htm](http://www.dhrm.state.va.us/services/compens/careergroups/AdminOfficeSupport19010.htm) <last visited May 19, 2003>. During this Department's investigation, DMV Human Resources clarified that the grievant is, in fact, an Administrative and Office Specialist III.

<sup>2</sup> The grievant stated in her grievance that her supervisor is out of the office 75% of the time, and as a result, she is required to manage the day-to-day operation of the office.

<sup>3</sup> During this Department's investigation, the grievant noted that since the filing of her grievance, DMV has removed her duties involving the conference, nonprofit training, and the newsletter. Those functions have now been outsourced to Virginia Commonwealth University (VCU) and the Virginia Association of Chiefs of Police (VACP). Management noted that the traffic safety conference responsibilities (as well as other conferences) were moved to VCU because they had become too large for DMV to handle and that responsibility for the newsletter now rests with the graphic artist at the VACP. Significantly, the grievant stated during this Department's investigation that with the removal of these responsibilities, she is now working within her role and is properly classified as an Administrative and Office Specialist III. However, she continues to claim that for the past three years, she was improperly classified.

<sup>4</sup> The grievant's current position is in Pay Band 3. The positions in the Program Administration Career Group that the grievant references in her grievance are in Pay Bands 4 and 5.

The grievant also alleges that her supervisor has made several offensive and harassing comments based on the grievant's age.<sup>5</sup> Additionally, she claims that her supervisor often uses profanity in the office and has sent unwelcome and obscene emails.<sup>6</sup>

The agency claims that the grievant's position has been reviewed twice by DMV Human Resources in the past three years, and that those reviews resulted in pay increases.<sup>7</sup> This past year, Human Resources again reviewed the grievant's Employee Work Profile, as well as a list of duties supplied by the grievant,<sup>8</sup> and determined that the grievant's position is properly classified and that she is compensated appropriately. Moreover, the agency disputes that the grievant's supervisor harassed the grievant on the basis of her membership in a protected class.

### DISCUSSION

#### *Misapplication of Compensation Policy - Classification*

The grievant argues that for the past three years, she has been working outside of her job class. By statute and under the grievance procedure, complaints relating solely to the establishment and revision of salaries and position classifications "shall not proceed to hearing"<sup>9</sup> unless there is sufficient evidence of discrimination, retaliation, discipline, or a misapplication or unfair application of policy. In this case, the grievant alleges that the agency's failure to grant an upward role change or to compensate her for the duties she performed was a misapplication or unfair application of policy.

For such a claim to qualify for a hearing, there must be evidence raising a sufficient question as to whether management violated a mandatory policy or whether the challenged action, in its totality, is so unfair as to amount to a disregard of the intent of the applicable policy. The General Assembly has recognized that the Commonwealth's system of personnel administration should be "based on merit principles and objective

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<sup>5</sup> The allegedly harassing statements include: (1) references to the grievant's mother, who died of Alzheimer's disease at the age of 93, (2) accusations that the grievant is sick, hormonal, or forgetful, (3) asking the grievant why she doesn't find another job, (4) calling the grievant "daffy," and (5) sending an email with the subject line "Earth to [grievant]."

<sup>6</sup> The grievant's supervisor sent an email/internet joke to the grievant on September 17, 2002, entitled "Do you know Jack Schitt???"

<sup>7</sup> The agency provides that in January 2001, the grievant's position was reallocated upward, resulting in a 9.32% pay increase retroactive to February 2000 and in November 2001, the grievant received a 10% in-band adjustment for internal alignment.

<sup>8</sup> The grievant claims that her supervisor "doctored up" the list before it was submitted to Human Resources. This Department has reviewed the grievant's list with the supervisor's comments. It appears that the supervisor's amendments to the list were minor and did not alter the grievant's language, other than to insert a word or two or to draw a line through a phrase. In any event, the grievant's original writings are still visible.

<sup>9</sup> Va. Code § 2.2-3004(C).

methods” of decision-making.<sup>10</sup> In addition, the Commonwealth’s classification plan “shall provide for the grouping of all positions in classes based upon the respective duties, authority, and responsibilities,” with each position “allocated to the appropriate class title.”<sup>11</sup>

The above statutes evince a policy that would require state agencies to allocate positions having substantially the same duties and responsibilities to the same role. Importantly, the grievance procedure accords much deference to management’s exercise of judgment, including management’s assessment of the degree of change, if any, in the job duties of a position. Accordingly, this Department has long held that a hearing officer may not substitute his or her judgment for that of management regarding the correct classification of a position.<sup>12</sup> Thus, a grievance that challenges the substance of an agency’s assessment of a position’s job duties does not qualify for a hearing unless there is sufficient evidence that the assessment was plainly inconsistent with other decisions within the agency or was otherwise arbitrary or capricious.<sup>13</sup>

Under Department of Human Resource Management (DHRM) policy, the Administrative and Office Support Career Group consists of roles (including Administrative and Office Specialist III, the grievant’s position) that define the typical career paths for employees who pursue careers in administrative and office support. The duties in this Career Group range from entry level to first-line supervisory level.<sup>14</sup> In this case the grievant claims that her position should be classified in the Program Administration Career Group. Although she does not specify *which* role within that Career Group, it appears that she looked to duties listed for three of the roles in this Career Group: Program Administration Specialist I and II and Program Administration Manager I.<sup>15</sup> Each of these roles is distinguished based on upon the Compensable Factors of Complexity, Results, and Accountability, which determine position classification.<sup>16</sup> As discussed below, while there are similarities in the role descriptions, the roles in the Program Administration Career Group require a significantly higher level of practice than that required of an individual in the role of Administrative and Office Specialist III.<sup>17</sup>

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<sup>10</sup> Va. Code § 2.2-2900.

<sup>11</sup> Va. Code § 2.2-103(B)(1).

<sup>12</sup> See EDR Ruling No. 2001-062.

<sup>13</sup> See *Grievance Procedure Manual* § 9, page 23. “Arbitrary or capricious” is defined as a decision made in disregard of the facts or without a reasoned basis.

<sup>14</sup> See [www.dhrm.state.va.us/services/compens/careergroups/AdminOfficeSupport19010.htm](http://www.dhrm.state.va.us/services/compens/careergroups/AdminOfficeSupport19010.htm) <last visited May 19, 2003>.

<sup>15</sup> See [www.dhrm.state.va.us/services/compens/careergroups/admin/ProgAdmin19210.htm](http://www.dhrm.state.va.us/services/compens/careergroups/admin/ProgAdmin19210.htm) <last visited May 19, 2003>.

<sup>16</sup> See DHRM’s Human Resource Management Manual, Chapter 6, *Job Evaluation*, pages 2-3 (describing in detail Compensable Factors).

<sup>17</sup> See general descriptions of roles contained on DHRM’s Web site. *Supra* notes 14 and 15. The Administrative and Office Specialist III role provides career tracks for individuals from entry to supervisory levels whose broad duties may include “compliance assurance, report writing, reconciliation of information or financial data, records management, scheduling, claims review and processing, data collection and analysis, research, inventory, budget management, personnel administration, and funds

### Complexity

While there are similarities between the “complexity”<sup>18</sup> components for the grievant’s position and the Program Administration Specialist I position, the role of Program Administration Specialist I requires responsibilities not required of an Administration and Office Specialist III and requires “a specialized knowledge of the program area and the laws, regulations, policies, and procedures relevant to the program.”<sup>19</sup> The Program Administration Manager I role requires knowledge of personnel management and budgetary controls and interprets policies. The Program Administration Specialist II role monitors program activities, develops policies, manages grants, and develops long-range goals for the program.<sup>20</sup> None of these components is listed under for the role of Administration and Office Specialist III.<sup>21</sup>

In this case, although the grievant disputes management’s determination of the extensiveness of her responsibilities with the planning of the conference and the complexity of her work over the past three years, the evidence does not establish that management’s decision was in disregard of the facts, without a reasoned basis, or plainly inconsistent with other similar job classification decisions. Indeed, management appears to have thoroughly reviewed the facts and found that the grievant’s duties were appropriately classified in the Administration and Office Specialist III role. Review of the grievant’s Employee Work Profiles (EWPs), past and present, indicate that the difficulty of the work, the scope and range of assignments, and the knowledge, skill, and abilities required of the grievant’s position appear to be similar to the description of the Administration and Office Specialist III role. The fact that *some* of the grievant’s duties could be matched with *some* of the components of the Program Administration roles does not establish that management’s denial of an upward role change was arbitrary or capricious, when classification of a position into a role is predicated upon matching it to the *predominate* set of duties and KSAs.

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collections or expenditures.” *See supra* note 14. The roles in the Program Administration Career Group “require a specialized knowledge of the program area and the laws, regulations, policies, and procedures relevant to the program” and may include “management of administrative, budgeting, operational and programmatic activities.” *Supra* note 15.

<sup>18</sup> The Complexity of Work factor encompasses the difficulty of the work, the scope and range of assignments, the knowledge, skills, and abilities required, and the nature of contacts. *See* DHRM’s Human Resource Manual, Chapter 6, *Job Evaluation*, page 2.

<sup>19</sup> *Supra* note 15 (DHRM’s Web site discussion Role Descriptions for Program Administration Career Group). Responsibilities of a Program Administration Specialist I include, among other things, program planning and development, conducting studies and research, assessing needs of the program, policy development and analysis, and coordination of resources.

<sup>20</sup> *See supra* note 15 (description of Program Administration Career Group).

<sup>21</sup> *See supra* note 14 (description of Administration and Office Specialist III).

### Results

The second Compensable Factor is “results.”<sup>22</sup> All of the roles in question in this case make decisions that impact operations and services provided by the organization unit. Additionally, roles in the Program Administration Career Group advise others about the program, impact the use of funds and program efficiency, perform specialized tasks. Moreover, individuals in the Program Administration Specialist II role perform services that are essential to the maintenance of the program and support the programs through research, supervision, and liaison activities. Although the grievant indicates that her responsibilities in planning the traffic safety conference and issuing the newsletter had a significant impact both inside and outside state government, she has not presented evidence that her administrative decisions impact systems beyond the “results” listed for an Administrative and Office Specialist III. While some of the grievant’s duties may match the “results” for those roles in the Program Administration Career Group, which are broadly defined, it does not necessarily follow that the grievant is predominately performing at the level of any of those roles on a regular basis.

### Accountability

The final Compensable Factor to consider is “accountability,”<sup>23</sup> which requires an employee in all roles at issue in this case to exercise independent judgement and to supervise and train employees.<sup>24</sup> Additionally, those roles in the Program Administration Career Group “may influence policy and program changes,” manage program areas, have daily operational responsibilities, and may be “accountable for continued maintenance” of the programs.<sup>25</sup> As evidence, the grievant cites her leadership of her unit in her supervisor’s absence and the fact that she supervises and trains employees as needed. Moreover, the grievant claims that her role in organizing the conference requires significant independence. While these responsibilities certainly fit into the “accountability” Compensable Factors for the Program Administration roles, they also fit into the “accountability” factors for the Administrative and Office Specialist III. Furthermore, it is not clear that she has had the level of leadership as contemplated by the Program Administration role descriptions.

In light of all the above, the grievant has presented insufficient evidence that the agency’s denial of her upward role change to a role in the Program Administration Career Group was plainly inconsistent with the other similar agency decisions or was otherwise arbitrary or capricious. Again, it appears that management carefully considered the

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<sup>22</sup> The Results factor includes the impact of the employee’s work, the effect of services based upon the employee’s work, and the consequence of error by the employee. See DHRM’s Human Resource Management Manual, Chapter 6, *Job Evaluation*, pages 2-3.

<sup>23</sup> The Accountability factor encompasses the employee’s level of leadership, judgement and decision-making, and independence of action. See DHRM’s Human Resource Management Manual, Chapter 6, *Job Evaluation*, page 3.

<sup>24</sup> See *supra* notes 14 and 15.

<sup>25</sup> See *supra* note 15 (DHRM’s Web site describing the roles Program Administration Specialist I and II and Program Administration Manager I).

grievant's qualifications and made a reasoned decision based upon all the facts and evidence.

Compensable Factors are defined very broadly, and certain duties in one role may often match Compensable Factors in another role. However, this fact does not necessarily mean that a position is misclassified. Given the breadth of duties contemplated for an Administrative and Office Specialist III, the grievant simply has not presented evidence that she was working outside of the scope of her job classification. While the grievant may disagree with the agency's assessment of her position and her responsibilities, there is adequate evidence that the agency's assessment and classification had a reasoned basis. As such, this issue does not qualify for a hearing.

#### *Misapplication of Compensation Policy - Salary*

The grievant further argues that her salary is \$1800 less than it should be. As evidence, she cites an August 2002 memorandum from a Human Resources employee stating that the grievant's salary is approximately \$1800 below the average of the three employees in her unit who are in the Administrative and Office Specialist role. For a misapplication of policy claim 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. DMV acknowledges that two employees in the grievant's department have a higher salary, but has determined that the salary difference is not a case of internal inequity because each of the employees performs a different job and have different backgrounds and work histories.<sup>26</sup>

Under the DHRM Compensation Policy, salary changes using in-band adjustments for internal alignment should be made considering Pay Factors<sup>27</sup> and provisions of the agency's Salary Administration Plan.<sup>28</sup> In this case, management exercised the discretionary authority granted by policy and determined that the other two employees have more seniority and experience, thus justifying a higher salary.

The grievant has presented no evidence that she was improperly excluded from consideration for an in-band adjustment or that management's actions were arbitrary,

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<sup>26</sup> For example, the other Administrative and Office Specialist IIIs have been employed since 1981 and 1985. The grievant, on the other hand, has been employed since 1996. One employee earns approximately \$500 more annually than the grievant, while the other earns nearly \$5,000 more.

<sup>27</sup> Pay Factors: (1) Agency Business Needs; (2) Duties and Responsibilities; (3) Performance; (4) Work Experience and Education; (5) KSAs and Competencies; (6) Training; (7) Certification and Licensure; (8) Internal Salary Alignment; (9) Market Availability; (10) Salary Reference Data; (11) Total Compensation, Budget Implications; (12) Long Term Impact; and (13) Current Salary. (See DHRM Policy 3.05, "Definitions" (effective September 25, 2000, revised March 1, 2001).

<sup>28</sup> See generally DHRM Policy 3.05. The Agency Salary Administration Plan "addresses the agency's internal compensation philosophy and policies; responsibilities and approval processes; recruitment and selection process; performance management; administration of pay practices; program evaluation; appeal process; EEO considerations and the communication plan." *Id.*

capricious, or inconsistent with its treatment of the other Administrative and Office Specialists in her department. Indeed, it would appear that DMV has considered the Pay Factors, as required by policy, and concluded that the grievant's salary was appropriate under the circumstances. Therefore, this grievance does not raise a sufficient question as to whether state or agency policy was misapplied or unfairly applied by denying the grievant an in-band adjustment.

#### *Harassment/Hostile Work Environment*

The grievant further claims that she has been subjected to discriminatory harassment that created a "hostile work environment." Specifically, the grievant claims that her supervisor has made offensive comments based on her age, with references to the grievant's mother who died of Alzheimer's disease and accusations of forgetting. Additionally, the grievant claims that her supervisor often uses offensive language and has sent an obscene email to her. Although all complaints initiated in compliance with the grievance process may proceed through the three resolution steps set forth in the grievance statute, thereby allowing employees to bring their concerns to management's attention, only certain issues qualify for hearing. For example, while grievable through the management resolution steps, claims of hostile work environment and harassment qualify for a hearing only if the employee presents sufficient evidence showing that the challenged actions are based on race, color, national origin, age, sex, religion, political affiliation, or disability.<sup>29</sup> This Department has long held that general supervisory hostility does not, in and of itself, qualify for a hearing.<sup>30</sup>

For the grievant's claim of a hostile work environment based on age to qualify for hearing, she must come forward with evidence raising a sufficient question that: (1) she was subjected to unwelcome harassment; (2) the harassment was based on age; (3) the harassment was sufficiently severe or pervasive to alter her conditions of employment and create an abusive atmosphere; and (4) there is some basis for imposing liability for the harassment on the employer.<sup>31</sup> Further, courts have uniformly held that while a statement may be insensitive and offensive, a mere offensive utterance that occurred once and did not unreasonably interfere with an employee's ability to work cannot be said to create a hostile work environment based on race or any other protected class.<sup>32</sup>

Because the grievant is over the age of 40, she is a member of a protected class. However, there is insufficient evidence that the supervisor's actions were based on the grievant's age, or were sufficiently severe or pervasive such as to create, on the basis of age, an abusive working environment that unreasonably interfered with the grievant's

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<sup>29</sup> Va. Code § 2.2-3004(A)(iii); *Grievance Procedure Manual* § 4.1(b)(2), page 10. See also DHRM Policy 2.30, which defines workplace harassment as conduct that "denigrates or shows hostility or aversion towards a person on the basis of race, color, national origin, age, sex, religion, disability, marital status, or pregnancy."

<sup>30</sup> See e.g. EDR Rulings 2001-002,-011,-CC and 2002-190.

<sup>31</sup> See *Causey v. Balog*, 162 F.3d 795, 801(4<sup>th</sup> Cir. 1998).

<sup>32</sup> See *Murphy v. Danzig*, 64 F. Supp.2d 519, 522 (E.D.N.C. 1999).



capacity to work. The grievant's supervisor states that she does not recall making the statements. However, assuming for purposes of this ruling only that she did, they do not appear to be age-based. For example, the comments that the grievant is "daffy" and "hormonal" and the email with the subject line "Earth to [grievant]" could apply to individuals of any age group. Moreover, it is unclear whether the comments about the grievant's mother's Alzheimer's disease were general inquiries or comparisons. In any event, even if the alleged comments were related to the grievant's age, they were not sufficiently severe or pervasive to meet the legal standard for a hostile work environment.<sup>33</sup> While the supervisor's remarks may have been inappropriate and offensive to the grievant, this Department concludes that they are insufficient to sustain a claim of age-based discrimination that altered the terms and conditions of her employment. Further, as noted above, this Department has long held that a claim of general supervisory hostility, however unprofessional, does not qualify in and of itself for a 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 the qualification 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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Claudia T. Farr  
Director

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Leigh A. Brabrand  
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<sup>33</sup> In order to qualify for hearing, the harassment must be so severe or pervasive as to alter the conditions of employment. *See* Ocheltree v. Scollon Productions, Inc., 308 F.3d 351, 356 (4th Cir. 2002). The grievant has provided insufficient evidence that the conditions of her employment were altered.