

Issue: Qualification/grievant claims he was not selected for promotion because agency misapplied and/or unfairly applied hiring policy; Ruling Date: March 18, 2004; Ruling #2003-432; 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  
EDR Ruling No. 2003-432  
March 18, 2004

The grievant has requested a ruling on whether his August 6, 2003 grievance with the Department of Transportation (VDOT or the agency) qualifies for a hearing. The grievant claims he was not selected for promotion because the agency misapplied and/or unfairly applied policy. For the following reasons, his grievance does not qualify for a hearing.

FACTS

The grievant has been employed by VDOT for 30 years. At present, he is a Transportation Operations Manager I (TOM I). In July 2003, the grievant applied for a position as a Transportation Operations Manager II (TOM II). The agency received five applications for the position and four employees were interviewed. While the grievant was granted an interview, he was not the successful candidate. The successful candidate has been employed by VDOT since 1996, and, at the time he was offered the TOM II position, he was the assistant to the Transportation Operations Manager III (TOM III). The hiring panel consisted of three members: the TOM III ("the Manager") from the residency with the opening, the Transportation Maintenance Manager from another VDOT residency, and a Human Resource Analyst.

In August 2003, the grievant initiated a grievance challenging management's selection decision. The grievant asserts that he was the most qualified applicant, and that the successful candidate does not possess the knowledge, skills and abilities contained in the position description.<sup>1</sup> He also challenges the composition of the hiring panel, claiming the Manager should have been excluded because he was the immediate supervisor of the successful candidate as well as a close personal friend. Likewise, he contends the Transportation Maintenance Manager was an inappropriate choice because he once was related to the Manager by marriage and they remain friends.

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<sup>1</sup> During the investigation for this ruling, the grievant clarified this statement, indicating that the only qualification of the successful candidate he disputes is his supervisory experience.

In response to the grievant's allegations, VDOT management states hiring policies require the panel to select the candidate "best-suited" for the position, rather than "best-qualified" as the grievant asserts, and management fairly considered all relevant factors, including the grievant's interview performance, background and experience. With respect to the grievant's dispute with the composition of the interview panel, management asserts the TOM III's presence was appropriate because he is directly responsible for supervising the work of the TOM II. Additionally, management maintains that a former distant relationship by marriage in no way precludes the Transportation Maintenance Manager from serving on a hiring panel with the TOM III.

During the investigation for this ruling, the panel members provided reasons for the grievant's non-selection. All panel members concur that the successful candidate performed better in the interview, providing more responsive answers. Furthermore, while acknowledging that the successful candidate had significantly fewer years of supervisory experience than the grievant, the Manager notes that the successful candidate actually served as the Acting TOM III for several months prior to the Manager's being hired to fill the vacancy and had done an exceptional job. The successful candidate also was responsible for the Manager's duties when the Manager was absent, and he supervised an employee in Building and Grounds on a daily basis. He also had supervisory experience prior to his employment with VDOT.

Lastly, panel members note the grievant had been given the opportunity to prove himself in the position of TOM II when the individual in that position retired and the grievant took on those duties prior to VDOT filling the position. Having observed the grievant's performance during that time, the Manager states he felt the grievant was not the best-suited candidate.

### 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 or unfairly applied.<sup>2</sup> 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 have sufficient supervisory experience, and by failing to select the grievant as the more qualified candidate for the position. He also challenges the composition of the hiring panel.

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<sup>2</sup> Va. Code § 2.2-3004; *Grievance Procedure Manual* § 4.1, pages 10-11.

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 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.<sup>3</sup> It is the Commonwealth's policy that hiring and promotions be competitive and based on merit and fitness.<sup>4</sup>

With respect to the grievant's claims that the successful applicant did not have sufficient supervisory experience for the TOM II position and the grievant was the best qualified applicant, the supervisory requirements outlined in the job announcement state an applicant should have a "[w]orking knowledge of supervisory...principles" and have "[d]emonstrated ability to supervise...personnel."<sup>5</sup> Significantly, however, the extensiveness of the supervisory experience sought by management is not detailed in the announcement. In this instance, the successful candidate did possess supervisory experience: he (i) served as the Acting Tom III for several months; (ii) filled in for the TOM III during his absences; (iii) daily supervised an employee in Buildings and Grounds; (iv) assisted the TOM III with daily operations; and (iv) had supervised others prior to his employment with VDOT.

While it is undisputed that the grievant has extensive supervisory experience and was qualified for the position, such experience is only one of the factors considered by management that ultimately determine who is best suited for a position. During the investigation of this ruling, the panel members indicated they had carefully considered the grievant's supervisory experience, but did not deem him to be the best suited candidate. Indeed, although he disputes the successful candidate's supervisory experience, the grievant has acknowledged that the successful candidate was well qualified in many ways for the position. In this case, the grievant's assertions merely reflect that the grievant's perception of his qualifications and suitability for the position differ from that of management. Because policy gives management the discretion to determine who is best suited for the job, the grievant's perceptions of his qualifications and suitability cannot support a claim that management misapplied or unfairly applied policy.

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<sup>3</sup> Department of Human Resource Management (DHRM) Policy No. 2.10 (defining selection as the final act of determining the best-suited applicant for a specific position; and knowledge, skill, and ability as components of a position's qualification requirements); *see also* Virginia Department of Transportation Policy 2.10, Hiring Policy, I.I.c., page 8 of 9 (defining the responsibilities of the hiring manager to include selecting the best-suited candidate for the position).

<sup>4</sup> Va. Code § 2.2-2901 (stating, 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).

<sup>5</sup> Job Announcement for Transportation Operations Manager II (TOM II).

The grievant also disputes the composition of the hiring panel because (i) one panel member is the supervisor of the successful candidate and (ii) another member is the close friend of the supervisor. However, neither the state nor agency hiring policies contain a prohibition against the supervisor of one or more of the candidates from serving on the panel. Thus, a qualified manager who is also the personal friend of the supervisor would not be precluded from serving. Accordingly, the panel composition did not violate the selection policy.

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 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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