

Issue: Qualification/Discrimination/Race, Age; Recruitment/Selection; Retaliation/Other protected right; Ruling Date: December 9, 2003; Ruling #2003-148; Agency: University of Virginia; Outcome: qualified



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of University of Virginia/ No. 2003-148
December 9, 2003

The grievant has requested a ruling on whether her April 30, 2003 grievance with the University of Virginia (UVA or University) qualifies for a hearing. The grievant claims that her supervisor retaliated and discriminated against her when he failed to grant her a promotion. For the following reasons, this grievance qualifies for a hearing.

FACTS

The grievant is an Administrative and Office Specialist III (Pay Band 3) with UVA's Department of Medicine. On February 26, 2003, the University posted a job vacancy in the grievant's Division for the position of Grants Specialist (Pay Band 4). The posting stated that "applicants should have a bachelor's degree in business or related field and experience in public administration, accounting, or business management. Prior grant management experience is preferred."¹ The grievant applied and was interviewed for this position, but was not the successful candidate.

The grievant claims that she should have been awarded the position, based on her seniority within the Division, her qualifications, and the Division's practice of promoting employees internally.² Specifically, the grievant cites to her more than 30 years of service with the Division, her Bachelor's degree in Business Administration, and her background in health administration. The grievant further stated during this Department's investigation that the successful candidate is less senior than the grievant, does not possess a college degree, and did not come from within the grievant's Division. She asserts that her supervisor is discriminating against her based on her age and race.³ She claims that her supervisor, who was the hiring authority, said that she is "too old to learn a new job."⁴ She further claims that other staff members who have been promoted

¹ Advertisement for Grants Specialist Position, University of Virginia, posted February 26, 2003.

² As an example of promoting from within the Division based on seniority, the grievant noted during this Department's investigation that her supervisor recently promoted the most senior technician to a research position.

³ The successful candidate for the Grants Specialist position is younger than the grievant and is white. The grievant is African American.

⁴ See Grievance Form A, filed April 30, 2003.

in the past have been white. Moreover, the grievant claims that her supervisor is retaliating against her for filing complaints against him.⁵

The grievant's supervisor claims that the successful candidate has greater experience than the grievant in grants management, the primary requirement for the position. During this Department's investigation, he also stated that more importantly, the successful candidate received two strong references stating that she was a "team player," which he claims is an important quality for this position. By contrast, he states that the grievant "has demonstrated an inability to work with others."⁶ He claims that the decision was based wholly on merit, and that age, race, and the grievant's complaints against him were not considered.

DISCUSSION

Age Discrimination

For a claim of age discrimination in the hiring or selection context to qualify for a hearing, there must be more than a mere allegation that discrimination has occurred. Rather, an employee must be forty years of age or older and must present evidence raising a sufficient question as to whether she: (1) was a member of a protected class;⁷ (2) applied for an open position; (3) was qualified for the position, and (4) was denied promotion under circumstances that create an inference of unlawful discrimination.⁸ Where the agency, however, presents a legitimate, non-discriminatory reason for the employment action taken, the grievance should not qualify for a hearing, unless there is sufficient evidence that the agency's stated reason was merely a pretext or excuse for age discrimination.

The grievant is 59 years old and is minimally qualified for the Grants Specialist position.⁹ The successful candidate is 46 years old. As noted above, the agency stated a non-discriminatory reason for awarding the Grants Specialist position to another individual: the successful candidate's experience in grants management and her demonstrated ability to be a "team player." However, the grievant has brought forth

⁵ She claims that her supervisor has said "why should I promote you when you went throughout the hospital and reported me." Grievance Form A, filed April 30, 2003. During this Department's investigation, the grievant stated that she filed a grievance against her supervisor in 2000 and has filed complaints with the Equal Employment Opportunity Commission (EEOC).

⁶ First-Step Response, dated May 16, 2003.

⁷ It is unlawful for an employer to discriminate against an employee on the basis of age. See 29 U.S.C. 621 et seq. (ADEA). The ADEA's protections extend only to those who are at least forty years old. Such discrimination is also a violation of state policy. See Department of Human Resource Management (DHRM) Policy 2.05.

⁸ See *Dugan v. Albemarle County Sch. Bd.*, 293 F.3d 716, 720-721 (4th Cir. 2002)(noting that proof of selection of a substantially younger employee is required, not necessarily selection of someone entirely outside of the ADEA's protected class).

⁹ As noted above, the position description calls for candidates with a Bachelor's degree in business and experience in public administration, both of which the grievant possesses.

evidence that raises a question of pretext. Specifically, she claims that her supervisor, who was the hiring authority for the Grants Specialist position, stated that she was “too old to learn a new job.” The grievant’s supervisor acknowledged during this Department’s investigation that he made the comment but states that it was made in jest after the hiring decision and did not relate to the Grants Specialist job.¹⁰ Moreover, he claims that the comment referred to both himself and the grievant, in a joking manner, because they are roughly the same age. However, the statement raises a sufficient question of discriminatory intent that warrants further exploration of the facts and circumstances by a hearing officer. Therefore, the issue of age discrimination qualifies for hearing.

Additional Theories for Non-selection

The grievant has advanced several alternative theories related to the agency’s decision not to promote her, including allegations of retaliation and race discrimination. Because the issue of age discrimination qualifies for a hearing, this Department deems it appropriate to send these ancillary issues for adjudication by a hearing officer as well, to help assure a full exploration of what could be interrelated facts and claims.

CONCLUSION

For the reasons discussed above, this Department qualifies the April 30, 2003 grievance for a hearing. This qualification ruling in no way determines that the agency’s decision not to promote the grievant was discriminatory or otherwise improper, only that further exploration of the facts by a hearing officer is appropriate.

For information regarding the actions the grievant may take as a result of this ruling, please refer to the enclosed sheet.

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Director

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¹⁰ The grievant claims that the comment was made prior to the hiring decision and that it was in reference to the Grants Specialist position. The Personnel liaison, who was present at the meeting in which the comment was made, stated that the comment was made after the hiring decision. She further stated that the purpose of the meeting was to discuss the grievant’s nonselection for the Grants Specialist position.