

Issue: Qualification/Misapplication and/or unfair application of hiring policies/Recruitment and selection; Ruling Date: July 21, 2004; Ruling #2003-495; Agency: Department of Motor Vehicles; Outcome: not qualified. Appealed in the Circuit Court for Lee County; Decision: EDR's ruling Affirmed; Entered on November 17, 2004.



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

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Motor Vehicles  
No. 2003-495  
July 21, 2004

The grievant has requested a ruling on whether her June 9, 2003 grievance with the Department of Motor Vehicles (DMV or the agency) qualifies for a hearing. The grievant claims that the agency misapplied and/or unfair applied hiring policies. For the following reasons, this grievance does not qualify for a hearing.

FACTS

The grievant has been employed by DMV for over 20 years and is currently an Assistant Branch Manager. She applied for the position of Customer Service Center Manager, and on June 2, 2003, she interviewed for the position before a three-person panel, but was not the successful candidate.

The grievant maintains DMV misapplied or unfairly applied hiring policy during the selection process. Specifically, she claims the District Manager should not have been on the panel because she was the supervisor of the selected applicant. Additionally, she asserts the successful candidate had an unfair advantage because, as the Administrative Assistant to the District Manager, she had been present at numerous interviews. Furthermore, during the investigation for this ruling, the grievant stated the successful candidate had access to the interview questions prior to the interview.

In response, the agency asserts policy does not prohibit the supervisor of an employee from serving on the panel. Also, management notes precautions were taken to ensure the selection would be fair. For example, the District Manager changed the interview questions from those asked previously of other applicants for manager positions in the district, and she handled the preparation of the interview packets herself. During the investigation for this ruling, the District Manager specifically denied the grievant's claim that the successful candidate had access to the interview questions prior to the interview, noting that she had prepared them shortly before the interview and kept them with her.

## 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.<sup>1</sup> 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."<sup>2</sup> 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 process.<sup>3</sup> In this case, the grievant claims that the agency misapplied or unfairly applied the hiring policies.

For an allegation of misapplication 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 applicable policies in this case are the Department of Human Resource Management (DHRM) Policy 2.10, *Hiring* and the DMV's hiring/selection policy.

First, the grievant challenges the District Manager's presence on the panel because the successful candidate reported to the District Manager at the time of the selection process. However, DMV policy states that the interviews for "[s]upervisory, managerial and high level professional positions are conducted by a panel composed of at least 2 members," with "[t]he Hiring Manager or Supervisor or designee" serving as the chairperson.<sup>4</sup> In this case, the District Manager was both the Hiring Manager and the Supervisor. Therefore, the panel composition was in accordance with policy. Furthermore, while the grievant asserts the successful candidate had an advantage in the interview process because she had been present at many interviews with the District Manager, it does not appear management acted unfairly. In fact, the District Manager has stated that because the successful candidate often attended interviews to record applicant's responses, the questions were altered to prevent the successful candidate from having an advantage over the other applicants for the position. Neither the grievant nor this investigation produced evidence to the contrary.

Lastly, the grievant asserts the successful candidate had access to the interview questions prior to the interview. After the grievant initiated her grievance, the agency investigated the grievant's claim. According to management, no evidence was discovered

---

<sup>1</sup> See Va. Code § 2.2-3004(B).

<sup>2</sup> Va. Code § 2.2-3004(C).

<sup>3</sup> *Grievance Procedure Manual* § 4.1(c), page 11.

<sup>4</sup> See DMV Policy, Interview Panel section. Additionally, DHRM policy does not prohibit an employee's current supervisor from serving as a panel member. See DHRM Policy 2.10, *Hiring*, effective date 9/25/00, revised date 3/1/01, pages 6 of 13, (stating requirements to be a panel member).

to support the grievant's assertion. Nor has this Department's investigation produced evidence of such.

During the investigation for this ruling, at the request of the grievant, the investigating consultant spoke with another applicant who believes the successful candidate knew the interview questions beforehand. This individual provided a witness who allegedly overheard the successful candidate discussing the interview questions with a co-worker prior to the interview. However, while the witness indicated having heard the successful candidate "practicing" for the interview with another employee, the witness did not overhear the specific questions being asked. Nor did the witness have any evidence to suggest the successful candidate had access to the questions prior to the interview.

In sum, while the grievant clearly disagrees with management's selection of the successful candidate, she has not presented evidence raising a sufficient question as to whether misapplication or unfair application of policy tainted the selection process. Accordingly, this issue does not qualify 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 this determination to the circuit court, the grievant should notify the human resources office, in writing, within five workdays 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.

---

Claudia T. Farr  
Director

---

Susan L. Curtis  
EDR Consultant