

Issue: Qualification/Recruitment/Selection; Ruling Date: July 30, 2004; Ruling #2004-507; 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. 2003-507
July 30, 2004

The grievant has requested a ruling on whether her July 11, 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 29 years. She applied for the position of Customer Service Center Manager at another DMV location, and on June 2, 2003, she interviewed 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 and worked closely with her. Additionally, she maintains the successful candidate had an unfair advantage because, as the Administrative Assistant to the District Manager, she was better prepared to perform in the interview. Also, during the investigation for this ruling, the grievant stated she was told the successful candidate had access to the interview questions prior to the interview. Furthermore, the grievant asserts the successful candidate should not have been chosen because she has less experience in customer service centers.

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 prepared the interview packets herself. Additionally, management states she is qualified for the position, but two of three panel members ranked the successful candidate above the grievant.¹ During the investigation for this

¹ Each panel member completed an interview worksheet with the *lowest* score reflecting the candidate best suited for the position. Two of three panel members scored the grievant higher than the selected applicant.

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.² 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."³ 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.⁴ 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. The grievant's claims are discussed in turn below.

Panel composition

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.⁵ In this case, the District Manager was both the Hiring Manager and the Supervisor. Therefore, the panel composition was in accordance with policy.

When the individual scores were combined to provide an overall score, the grievant's score was higher than the successful candidate's.

² See Va. Code § 2.2-3004(B).

³ Va. Code § 2.2-3004(C).

⁴ *Grievance Procedure Manual* § 4.1(c), page 11.

⁵ 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, page 6 of 13 (stating requirements to be a panel member).

Successful candidate works closely with panel chairperson

The grievant asserts the successful candidate had an advantage because she worked closely with the District Manager and had been present at many interviews. No state or agency policies address this issue. However, it does not appear DMV acted unfairly. The grievant acknowledges she has been interviewed by the District Manager on five occasions. Therefore, she, like the successful candidate, had been exposed to the standard questions many times and, thus, would have an alleged “advantage” over other applicants who have never been interviewed for the position of manager. Furthermore, management changed the questions to prevent the Administrative Assistant from having advance knowledge of the questions that would be asked of the applicants.

Access to interview questions

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

During the investigation for this ruling, the investigating consultant spoke with another applicant who believes the successful candidate had 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 improper access to the questions prior to the interview. Thus, the successful candidate or the co-worker could have drafted the questions to practice their interviewing skills. Moreover, the District Manager asserts she prepared the questions shortly before the interviews and the questions remained with her.

Successful candidate has less experience

Lastly, the grievant claims the successful candidate has less customer service experience than herself. While this is true, the agency asserts that the successful candidate possessed the best “total package” of the candidates (i.e. DVM experience, outside experience, education, knowledge, skills, abilities, and interview skills).⁶ Furthermore, during the investigation for this ruling, the panel members indicated the successful candidate gave an excellent interview.

⁶ See Second Resolution Step Response, dated August 15, 2003.

While it is undisputed that the grievant has extensive customer service experience and was qualified for the position, such direct experience is only one of the factors considered by management that ultimately determine who is best suited for a position. The panel members stated they had carefully considered the interview performance of all the candidates as well as the grievant's supervisory experience, but did not deem her to be the best suited candidate. In this case, the grievant's assertions merely reflect that the grievant's perception of her 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 her qualifications and suitability cannot support a claim that management misapplied or unfairly applied policy.

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.

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