

Issue: Qualification/grievant claims agency has misapplied and/or unfairly applied state and agency policy; Ruling Date: May 23, 2006; Ruling #2006-1192; Agency: Virginia Department of Transportation; Outcome: not qualified for hearing



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

**QUALIFICATION RULING OF DIRECTOR**

In the matter of Department of Transportation  
Ruling Number 2006-1192  
May 23, 2006

The grievant has requested a ruling on whether his September 29, 2005 grievance with the Department of Transportation (VDOT or the agency) qualifies for a hearing. The grievant claims that the agency has misapplied and/or unfairly applied state and agency policy. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

The grievant is employed with VDOT as an Engineer Tech II. On September 29, 2005, the grievant initiated a grievance challenging the agency's failure to select him for the position of "Contract Monitor," for which he had recently applied. The agency states that the grievant was not selected for the position because his selection could create a perception or appearance of favoritism or impropriety, as the grievant's father is the Residency Maintenance Manager. The grievant alleges that the agency has "subjectively applied" an "unwritten standard," and that it has allowed other family members to work together.

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.<sup>1</sup>

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

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<sup>1</sup> Va. Code § 2.2-3004; *Grievance Procedure Manual* § 4.1.

this case are the Department of Human Resource Management (DHRM) Policy 2.10, *Hiring* and the agency's hiring policy, VDOT Policy No. 2.10.

State hiring policy is designed not only to determine who may be *qualified* for the position, but also to ascertain which candidate is *best-suited* for the position. In determining who is the best-suited candidate, an agency has wide discretion. Accordingly, in making a selection decision, an agency may consider a number of factors, including whether selection of a particular candidate would result in an appearance of impropriety or a violation of law.

The agency asserts that the grievant was not selected for the Contract Monitor position because his father was the Residency's Maintenance Manager. The agency states that as Maintenance Manager, the grievant's father is responsible for the maintenance program and budget, and has "a key role in determining what functions are contracted and in making financial decisions regarding these contracts and their use." Although the grievant asserts that his father has little to do with contractors or contracted work, he admits that payment for contracted maintenance work comes out of the maintenance budget for which his father is responsible. Further, while the grievant states that he is not aware that his father has any role with respect to contracted work, he concedes that it is possible that his father supervises the work of contractors through his subordinates and admits that his father has the authority to release contracts for payment, although he is unaware of his father actually doing so.

The agency asserts that had the grievant been selected for the Contract Monitor position, he would have been responsible for monitoring the work of contractors performing contracted work and services in the maintenance program overseen by his father. The agency states that it was concerned that because of the father-son relationship, allowing the grievant to work in the position of Contract Monitor could have created an appearance of impropriety and favoritism. This was a determination the agency was free in its discretion to make in determining which candidate was "best suited" for the position.

The grievant also argues that his non-selection for the Contract Monitor position is inconsistent with its treatment of other family members who are allowed to work together. It appears that there are a number of situations in which immediate family members have been allowed to work in the same Residency. However, the agency asserts that none of those situations involves the same risk or appearance of potential fiscal impropriety as that which would be created by selecting the grievant for the Contract Monitor position. While the grievant argues that, in a number of cases, the agency has allowed family members to supervise each other or act as "timekeeper" for work performed by another, he admits that he is unaware of any situation in which a father and son are allowed to work together as Maintenance Manager and Contract Monitor. Under these circumstances, we cannot find that there is sufficient evidence of a misapplication or unfair application of policy to qualify this grievance for 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 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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