

Issue: Reconsidered Qualification – Grievant Procedure (Other Issue); Ruling
Date: March 3, 2008; Ruling #2008-1974; Agency: Department of
Environmental Quality; Outcome: Not Qualified



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

RECONSIDERED QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Environmental Quality
Ruling No. 2008-1974
March 3, 2008

The grievant has requested a “re-evaluation” of this Department’s (EDR’s) Ruling Number 2008-1926, in which EDR determined that the grievant’s November 6, 2007 grievance with the Department of Environmental Quality (the agency) did not qualify for hearing.

FACTS

The grievant’s November 6, 2007 grievance concerns a management position for which he recently applied. Though he was chosen to be a part of the interview pool, the agency did not select him as the successful candidate. In EDR Ruling Number 2008-1926, this Department determined that the grievance did not qualify for hearing. The grievant now disputes EDR’s analysis and conclusions in that ruling.

DISCUSSION

The grievant has asserted no grounds for which reconsideration of EDR’s qualification ruling is appropriate. Though there may be instances in which EDR will reconsider its rulings at the request of a party,¹ there are no grounds to do so in this case. Reconsideration of a compliance ruling is more appropriate because such rulings provide no opportunity for external appeal.² The grievant’s arguments, however, dispute EDR’s analysis and consideration of the merits of the grievance in a qualification ruling. The available and proper method to raise such a challenge is to appeal this Department’s determination to the circuit court in the jurisdiction in which the grievance arose.³ As such, this Department will not “re-evaluate” Ruling Number 2008-1926 because the arguments asserted by the grievant are those that should be raised to the circuit court.

¹ One such example might be a mistake of fact. *See, e.g.*, EDR Ruling No. 2008-1884.

² *See* Va. Code § 2.2-1001(5).

³ Va. Code § 2.2-3004(E); *Grievance Procedure Manual* § 4.4.

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 the original qualification determination, the grievant should pursue such an appeal to the circuit court in the jurisdiction in which the grievance arose pursuant to Virginia Code § 2.2-3004(E). If the court should qualify the grievance, within five workdays of receipt of the court's decision, the agency will request the appointment of a hearing officer unless the grievant notifies the agency that he does not wish to proceed.

Claudia Farr
Director