

Issue: Reconsidered Qualification – Management Actions
(Recruitment/Selection); Ruling Date: June 10, 2008; Ruling #2008-2023;
Agency: Department of Motor Vehicles; Outcome: No Ruling.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

RECONSIDERED QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Motor Vehicles
Ruling No. 2008-2023
June 10, 2008

The grievant has requested a re-evaluation of this Department's (EDR's) Qualification Ruling Number 2008-1956 and 2008-1959, in which EDR determined that the grievant's September 25, 2007 grievance with the Department of Motor Vehicles (DMV or the agency) did not qualify for hearing.

FACTS

The September 25, 2007 grievance concerns a Special Agent in Charge (SAC) position for which the grievant recently applied. Subsequent to his failure to be interviewed for the position, the grievant initiated a grievance in which he contested the selection process based on a variety of theories. The grievant asserted that: (1) only Special Agents were eligible to apply for the SAC position.; (2) the composition of the promotion board was improper; (3) the promotion board failed to review applicants' performance, training, and disciplinary records; (4) interview questions did not comply with policy; and (5) the board did not rank applicants.

In Ruling No. 2008-1956 and 2008-1959, this Department determined that the grievance did not qualify for hearing. The grievant has now asked this Department to review his grievance on new grounds, specifically, that the preliminary online screening process was improperly conducted.¹

¹ The grievant was screened out of the selection process at a preliminary stage. The agency required all applicants to answer a series of questions at the time of their online application including "screening questions" that were developed by Law Enforcement Services (LES). The online application system automatically scored each applicant based on the approved points assigned to each screening question. These scores were the percentage of eligible points received. The agency selected a minimum score of 70% for a further review of the applications. Those applicants whose automatic scores were less than 70%, such as the grievant who received a score of 35%, were eliminated from further review.

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,² there are no grounds to do so in this case.

Here the basis for the request for reconsideration is an entirely new theory, one not raised until after this Department issued Ruling No. 2008-1956 and 2008-1959. Just as it is crucial that the Grievance Form A set forth the action grieved (in this case, management's selection process) it is necessary that parties identify the theories in support of their position on qualification prior to the issuance of a qualification ruling by EDR. In this case, the grievant's attachment to the Grievance Form A set forth only the five bases described above in the "Facts" section of this ruling. These are addressed in Ruling No. 2008-1956 and 2008-1959. In addition, in the grievant's reply to the first step respondent's response, the grievant asserted that policy does not "authorize the use of a screening process, so it was unauthorized and improper for [the Deputy Director] to exclude me and others from interviews." Accordingly, this Department addressed the contention that the agency was not authorized to screen applicants.³ However, because the grievant has never until now asserted that he was improperly scored in the screening process or that the process itself was otherwise administered in a flawed manner, this Department had no reason to further address the screening process.

This Department cannot repeat the qualification process simply because a grievant has waited until after we have issued our qualification determination to raise a new theory. Where an employee has knowledge of the facts giving rise to the newly raised theory, such as here, where the grievant was informed of his score, scoring criteria, and so on, approximately a month prior to the initiation of the grievance, that employee cannot wait until the qualification process is completed and a ruling issued before first raising the theory. EDR has taken a similar approach in dealing with disputes over the admission of newly discovered evidence at grievance hearings. There, we have held that where a party was aware of the existence of the evidence in question prior to the hearing but did not attempt to introduce it at hearing, such evidence will not be viewed as newly

² One such example might be a mistake of fact. *See, e.g.*, EDR Ruling No. 2008-1884. Another example could be reconsideration of a compliance ruling, for which, unlike a qualification ruling, there is no opportunity for judicial appeal. *See* Va. Code § 2.2-1001(5).

³ In Ruling No. 2008-1956 and 2008-1959, we held:

With regard to the grievant's contention that the agency misapplied policy when it conducted a "screening" process not specifically permitted within LES Policy 1-12, this Department concludes that the agency has neither misapplied nor unfairly applied policy. Although "screening" applications is not specifically allowed in LES Policy 1-12, it is not specifically excluded either. More importantly, to require an agency to interview every applicant who may be minimally qualified for a position could be unduly burdensome and inefficient. Additionally, Department of Human Resource Management (DHRM) Policy 2.10, which applies to all current classified state employees, allows agencies to use screening criteria to select a subset of qualified applicants for interviews, provided those criteria are in accordance with the qualifications established for the position and applied consistently.

discovered evidence that the hearing officer will be required to review in a re-opened hearing.⁴ Likewise, we will not re-open the qualification process to hear for the first time claims that could have been made prior to the issuance of the qualification decision.

APPEAL RIGHTS AND OTHER INFORMATION

As instructed in Ruling No. 2008-1956 and 2008-1959, if the grievant would like to seek further review of those rulings, he should appeal them to the circuit court in the jurisdiction in which the grievance arose pursuant to Virginia Code § 2.2-3004(E).

Claudia Farr
Director

⁴ See, e.g., EDR Ruling No. 2008-1765; EDR Ruling No. 2007-1576.