

Issue: Qualification – Compensation (Position Classification); Ruling Date: October 19, 2009; Ruling #2009-2257; Agency: Department of Social Services; Outcome: Qualified.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Social Services
Ruling No. 2009-2257
October 19, 2009

The grievant has requested a ruling on whether her August 15, 2008 grievance with the Department of Social Services (DSS or the agency) qualifies for a hearing. For the reasons discussed below, this grievance qualifies for a hearing.

FACTS

In her grievance, the grievant challenges the classification of her position, asserting that the agency failed to properly follow the Commonwealth's classification policy. The grievant's current role is Administrative and Office Specialist III and her work title is Program Support Technician (PST). In 1999, the grievant was hired as a Program Support Technician (PST) Senior. As a PST Senior, the grievant's documented duties included serving as the "lead worker" over other DSS employees.¹ According to the agency, over time, the lead responsibilities were decreased and ultimately removed from the grievant's employee work profile (EWP) in 2000.² The agency asserts that the removal of these lead worker responsibilities rendered the grievant a PST rather than a PST Senior. However, the grievant's EWP continued to document her work title as a PST Senior until 2006. Moreover, at least some of her EWPs after 2000 contain language that could potentially be construed as describing the grievant's job elements or core responsibilities as including back-up assistance to staff in the absence of the supervisor, as well as the training of staff, as assigned.

¹ Performing as a lead worker means "[a]ssisting staff in the absence of [the] supervisor. Assist[ing] in training of staff regarding unit functions, payment processing, systems utilization and policy surrounding the [unit] procedures."

² Also, in September of 2000, under compensation reform, the Commonwealth eliminated its former classification system and pay grade structure. Effective September 25, 2000, all existing classifications were assigned to a more limited number of broader "Roles." The existing twenty-one pay grades were eliminated, and instead, each Role was assigned to one of nine broad "Pay Bands" with minimum and maximum pay ranges. Through compensation reform, the PST and PST Senior classifications were grouped with other similar classifications to comprise the new, broader role of Administrative and Office Specialist III in the new Pay Band 3.

In 2007, the agency conducted an agency-wide study that led to certain changes in classification and compensation. Those employees performing the duties of a PST Senior were moved from pay band 3 to pay band 4 with a new role title of General Administration Supervisor I/Coordinator I. According to the agency, because the grievant was not performing the duties of a PST Senior, she was not moved to the new pay band 4 role. Moreover, the grievant's role title, role code and pay band remained unchanged and she actually received a salary increase as a result of the 2007 Classification and Compensation Study.

After the study was conducted and the grievant became aware that employees with a working title of PST Senior were moved to a different role in a higher pay band, the grievant questioned agency management on why her classification had not been changed. As a result of the grievant's inquiries, the agency apparently conducted an individual assessment of the grievant's job duties in August 2007. This internal assessment revealed that the grievant was actually performing the duties of a PST despite the fact that her EWP documented her working title as a PST Senior. As such, the agency asserts that the grievant is properly classified as an Administrative and Office Specialist III with a working title of PST in pay band 3.

In January 2008, the grievant completed a Position Description Questionnaire (PDQ) whereby she assessed her current duties and responsibilities and submitted it to the agency for review. The agency did not change the grievant's work title or classification as a result of the PDQ. The grievant initiated her grievance on August 15, 2008 to challenge her classification and what she characterizes as a "demotion" from a PST Senior to a PST while other PST Seniors were "promoted to a higher pay band."

DISCUSSION

Although state employees with access to the grievance procedure may grieve anything related to their employment, only certain grievances qualify for a hearing.³ By statute and under the grievance procedure, complaints relating solely to issues such as the methods, means, and personnel by which work activities are to be carried out, as well as position classifications, hiring, promotion, transfer, assignment, and retention of employees within the agency "shall not proceed to hearing" unless there is sufficient evidence of discrimination, retaliation, unwarranted discipline, or a misapplication or unfair application of policy.⁴ In this case, the grievant claims that the agency has misapplied or unfairly applied policy in classifying her as a PST, a pay band 3 position, rather than a PST Senior, a pay band 4 position.

For the grievant's claim to qualify for a hearing, there must be evidence raising a sufficient question as to whether management violated a mandatory policy provision or whether the challenged action, in its totality, is so unfair as to amount to a disregard of

³ See *Grievance Procedure Manual* § 4.1.

⁴ Va. Code § 2.2-3004(C); *Grievance Procedure Manual* § 4.1(c).

the intent of the applicable policy. The General Assembly has recognized that the Commonwealth's system of personnel administration should be "based on merit principles and objective methods" of decision-making.⁵ In addition, the Commonwealth's classification plan "shall provide for the grouping of all positions in classes based upon the respective duties, authority, and responsibilities," with each position "allocated to the appropriate class title."⁶

The above statutes evince a policy that would require state agencies to allocate positions having substantially the same duties and responsibilities to the same role. Importantly, the grievance procedure accords much deference to management's exercise of judgment, including management's assessment of the degree of change, if any, in the job duties of a position. However, even though agencies are afforded great flexibility in making decisions such as those at issue here, agency discretion is not without limitation. Rather, this Department has repeatedly held that even where an agency has significant discretion to make decisions (for example, an agency's assessment of a position's job duties), qualification is warranted where evidence presented by the grievant raises a sufficient question as to whether the agency's determination was plainly inconsistent with other similar decisions within the agency or otherwise arbitrary or capricious.⁷

The grievance procedure also generally limits grievances that qualify for a hearing to those that involve "adverse employment actions."⁸ Thus, typically, a threshold question is whether the grievant has suffered an adverse employment action.⁹ An adverse employment action is defined as a "tangible employment action constitut[ing] a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits."¹⁰ Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one's employment.¹¹ In this case, the grievant asserts that she is improperly classified as a PST rather than a PST Senior and that as a result of this improper classification, she, unlike other PST Seniors, was not "promoted" to the role of General Administration Supervisor I/Coordinator I in pay band 4. These allegations could be viewed as adverse employment actions because if the grievant has been improperly classified, such wrongful

⁵ Va. Code § 2.2-2900.

⁶ Va. Code § 2.2-103(B)(1).

⁷ See *Grievance Procedure Manual* § 9 (defining arbitrary or capricious as a decision made "[i]n disregard of the facts or without a reasoned basis"); see also, e.g., EDR Ruling 2008-1879.

⁸ See *Grievance Procedure Manual* § 4.1(b).

⁹ While evidence suggesting that the grievant suffered an "adverse employment action" is generally required in order for a grievance to advance to hearing, certain grievances may proceed to hearing absent evidence of an "adverse employment action." For example, consistent with recent developments in Title VII law, this Department substitutes a lessened "materially adverse" standard for the "adverse employment action" standard in retaliation grievances. See EDR Ruling No. 2007-1538.

¹⁰ *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

¹¹ See, e.g., *Holland v. Washington Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007).

classification has affected her pay band and salary,¹² her job title, and quite possibly her opportunity for promotion.¹³

Moreover, this Department concludes that the evidence presented raises a sufficient question as to whether the agency's determination that the grievant should be classified as a PST rather than a PST Senior was arbitrary or capricious. In particular, the agency asserts that over time, the grievant's lead worker duties diminished and were ultimately removed from her EWP in 2000 and as such, she could no longer be classified as a PST Senior. However, as noted above, in 2008, the grievant was asked to complete a PDQ in order to assess her current duties and responsibilities. In this PDQ, one of the things the grievant was asked to identify was her level of supervision and scope of responsibilities over her own work as well as the work of other DSS employees. In response, the grievant indicated that she is "formally assigned to serve as the lead worker over professional or administrative employees" and listed five employees, all PSTs, that she allegedly leads. The last page of the PDQ, entitled the "Immediate Supervisor's Statement," is to be completed by the employee's immediate supervisor, who is to assess the employees responses to the PDQ for accuracy and completeness. One question posed to the immediate supervisor is whether "the description of the job as given by the employee accurately reflect[s] the tasks, duties and responsibilities that are actually required of [the] position?" The grievant's supervisor completed this page of the PDQ and answered affirmatively to the question regarding whether the grievant had accurately defined her job responsibilities. Of particular significance in this case is the fact that the immediate supervisor appears to have agreed with the grievant's statement that she currently leads other workers, a duty which the agency asserts the grievant no longer performed and as such, rendered her a PST rather than a PST Senior. Also noteworthy in this case is the fact that after 2000, the year management allegedly removed the lead responsibilities from her EWP, the grievant's EWP continued to reflect that she was a PST Senior. Based on the foregoing, this Department concludes that the grievant has raised a sufficient question as to whether the agency's assessment of her classification was arbitrary or capricious.

¹² According to DHRM Policy 3.05, an upward role change to a different pay band requires that the employee's salary be increased to the minimum of the new pay band. The minimum pay for a pay band 4 position is \$31,352. The grievant's salary at the time PST Seniors were moved upward to pay band 4 was \$29,147, below the minimum of pay band 4. Accordingly, if the grievant is misclassified as a PST rather than a PST Senior, such misclassification has affected her salary because had she been moved to the pay band 4 position like the PST Seniors, she would have received an increase in her salary to the minimum of that new pay band.

¹³ See EDR Ruling No. 2001-106 wherein this Department concluded that "failure to be reallocated to a higher pay grade could be viewed as an adverse employment action." In making this determination, this Department relied upon the case of *Boone v. Goldin* which states that to be adverse the management action must have some significant detrimental effect on such factors as compensation, job title, level of responsibility, or opportunity for promotion. *Boone v. Goldin*, 178 F.3d. 253, 256-257 (4th Cir. 1999). In EDR Ruling #2001-106, this Department viewed the failure of management to reallocate the employee to a higher pay grade as potentially effecting the employee's opportunity for promotion and thus, adverse in nature.

This ruling does not conclude that the grievant's position is not properly classified only that further review by an administrative hearing officer is warranted. Indeed, the classification of the grievant's position is within management's discretion, and so long as that classification has a reasonable basis in policy and duties performed, a hearing officer may not substitute his judgment for that of management's regarding the correct classification or level of an employee's position.¹⁴ If a hearing officer determines that DSS has misapplied or unfairly applied policy, he may only order that the agency reapply the policy as mandated or in a manner in keeping with the intent of the applicable policy. A hearing officer may not award any particular classification as relief.¹⁵

CONCLUSION

In light of the above, this grievance qualifies for a hearing. Please note that this determination cannot be construed as a finding that the agency misapplied or unfairly applied policy. Only a hearing officer can make such a determination after a full exploration of the facts. Within five workdays of receipt of this ruling, the agency shall request the appointment of a hearing officer to hear those claims qualified for hearing, using the Grievance Form B.

Claudia T. Farr
Director

¹⁴ Va. Code § 2.2-3004(B).

¹⁵ *Grievance Procedure Manual* § 5.9(b), *Rules for Conducting Grievance Hearings*, VI (C).