

Issue: Compliance – Grievance Procedure (Hearings); Ruling Date: April 29, 2011; Ruling No. 2011-2958; Agency: George Mason University; Outcome: Hearing Officer Not in Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of George Mason University
Ruling Number 2011-2958
April 29, 2011

The grievant has requested a compliance ruling in her grievance with George Mason University (the agency). The grievant asserts that the hearing officer improperly narrowed the scope of her grievance by not recognizing a compensation matter as one of the issues qualified for hearing. For the reasons set forth below, we hold that the compensation matter was qualified for hearing and must be considered by the hearing officer.

FACTS

The grievant was employed by the agency as an Administrative Manager. She was issued a Group II Written Notice for alleged attendance issues, refusal to perform certain duties, and her customer service attitude. On or about October 15, 2010, the grievant initiated a grievance challenging the Written Notice. The October 15th grievance also sought leave for her to care for a family member. Additionally, the grievance sought relief, among other things, \$15,000 in compensation for her work as a Lab Manager for the past two years.

On March 24, 2011, a hearing officer was appointed to hear the grievance (Case # 9550). On April 12, 2011, the grievant contacted the hearing officer to ensure that her concern regarding the agency's alleged failure to compensate her \$15,000 for her lab management work would also be addressed at the grievance hearing. The hearing officer responded by stating that:

I have reviewed the Grievance Form A to check what issues were approved for hearing by GMU. Under section one, the form states, "I was issued a Group II Written Notice that I did not deserve. I also requested an unconditional leave without pay per DHRM policy which was denied by Dean [C]; however, Professor [H], my direct supervisor is willing to give it to me and I would like to use it to care for my new born child," as the issues of the grievance. Under section 3 the grievance is qualified for hearing by the Agency head without any notation striking or modifying the stated issues. The Agency was free to qualify additional issues beyond the written

notice issue and did so on Grievance Form A in regard to the leave issue. The compensation issue raised by [the grievant] was not approved by the Agency head on Grievance Form A. Reference to the compensation issue by the Agency Contact Person on the Appointment Of Hearing Officer Form B does not act to qualify the issue for hearing. Therefore, I find that there are two issues which are qualified for hearing in this matter, (1) the Group II Written Notice disciplinary action (2) the denial of the Grievant's request for unconditional leave without pay per DHRM policy.

DISCUSSION

Under the grievance procedure, issues qualified by the agency head, the EDR Director or the Circuit Court must be decided by the hearing officer.¹ This Department has repeatedly held that in qualification decisions, the plain language of the Grievance Form A is determinative.² Indeed, the Grievance Form A is of paramount importance because the grievant, the agencies and this Department rely on the Form A to ascertain the intent of the parties. Here, it appears that the manner in which the grievant drafted her grievance may have caused confusion as to the “issues” or matters that were both qualified and, indeed, grieved. As the hearing officer notes, in the section marked “Issues” the grievant wrote:

"I was issued a Group II Written Notice that I did not deserve. I also requested an unconditional leave without pay per DHRM policy which was denied by Dean [C]; however, Professor [H], my direct supervisor is willing to give it to me and I would like to use it to care for my new born child."

The grievant does not mention in the “Issues” section anything that clearly identifies the compensation matter as an “issue” grieved. However, the failure to list the compensation matter in the “Issues” section of the Grievance Form A is not outcome determinative in terms of establishing whether the compensation matter was grieved and qualified for hearing. A grievance is to be read in its entirety and the “Issues,” “Facts,” and “Relief” sections collectively inform as to the matters challenged by the grievance.

Here, the “Relief” section states among other things that the grievant seeks \$15,000 in “compensation for the Lab Management portion of [her] work for the last 2 years.” Thus, it is evident that one of the concerns that forms the basis of this grievance is the agency’s alleged failure to adequately compensate the grievant. Moreover, the grievant, in multiple attachments to step respondents, has again raised the matter of the \$15,000, and at least one step respondent addressed her request for such compensation as “unreasonable.” Based on the facts of this particular case, this Department believes that the compensation matter is properly viewed as an issue grieved. Furthermore, while the agency head could have limited qualification of the grievance to the Written Notice alone, he would have had to do so through express and unequivocal language that would provide notice to the

¹ See *Rules for Conducting Grievance Hearings* § I.

² See Ruling No. 2004-611; Ruling No. 2004-696.

grievant that other issues were not qualified. There does not appear to be any evidence that the agency head did so. Because the agency head did not specifically state that the compensation concern was not qualified, it was qualified along with the leave and Written Notice challenges, and now must be considered by the hearing officer.³

In a supplement to her ruling request, the grievant has additionally asserted that other issues should be qualified: her claims of (1) retaliation based on a prior grievance, and (2) pregnancy discrimination in the form of (i) an informal demotion, and (ii) being asked to reduce her hours of work. Beginning first with retaliation, the grievant is free to assert that any of the originally grieved management actions, e.g., the denial of leave or Written Notice, were taken by management because of prior grievance activity. Theories as to why something may have happened, including alleged discriminatory or retaliatory intent, are not considered “issues” and are not required to be present on the Grievance Form A at the time it is initiated—they may be raised at a later time.⁴

In contrast, the management actions being challenged through the grievance—which are considered the true “issues” or claims—must be present on the Grievance Form A or attachments at the time of initiation. Additional issues or claims—that is, challenges to management actions not included in the original grievance—may not be added once the grievance has been initiated.⁵ Accordingly, the grievant may proffer potential evidence at hearing to show that management actions originally challenged in the grievance, such as the denial of leave and/or Written Notice, were retaliatory acts.

As to grievant’s claim that the agency’s request that she reduce her hours was a form of pregnancy discrimination, that is not a claim before the hearing officer because there is no evidence that she raised the matter of the request to reduce hours as an issue (challenged management action) on her original Grievance Form A or attachment. The grievant can raise her concerns over the agency’s request as supporting background evidence at hearing, to the extent that the agency’s hours-of-work request relates to the management actions originally grieved, such as the leave denial or compensation dispute. However, since a challenge to agency’s hours-of-work request was not raised on the Form A or attachment, the hearing officer cannot award any relief related to the agency’s alleged request to reduce work hours.

Finally, as to the claim of informal demotion, to the extent that the grievant is challenging her overall compensation, this claim was raised in the “Relief” section. The grievance seeks a “desk audit and revised EWP to reflect [the grievant’s] actual duties and establish proper compensation.” Thus, consistent with the reasoning set forth above, the broader issue of overall compensation was qualified and must be addressed by the hearing

³ We agree with the hearing officer that the form used to request the appointment of a hearing officer does not determine which issues have been qualified for hearing. However, we also believe that such a form can be instructive in helping to clarify which issues were qualified, where there may be ambiguities. Such ambiguities do not appear to be present in this case. In terms of clarification, the appointment form expressly indicates that the compensation dispute was qualified.

⁴ See EDR Ruling Nos. 2011-2796; 2007-1561, 2007-1587.

⁵ Grievance Procedure Manual § 2.4 (“Once the grievance is initiated, additional claims may not be added.”).

officer. Nothing in this ruling is intended to suggest that that grievant was improperly compensated or was retaliated or discriminated against.

This Department's rulings on matters of compliance are final and nonappealable.⁶

Claudia T. Farr
Director

⁶ Va. Code § 2.2-3003(G).