

Issue: Qualification – Separation from State (layoff); Ruling Date: August 17, 2011;
Ruling No. 2012-3044; Agency: Department of Criminal Justice; Outcome: Not
Qualified.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of the Department of Criminal Justice Services
EDR Ruling No. 2012-3044
August 17, 2011

The grievant has requested qualification of her May 22, 2011 grievance with the Department of Criminal Justice Services (the agency) regarding the restructuring and relocation of her position that led to her layoff. For the reasons set forth below, the grievance does not qualify for hearing.

FACTS

On April 7, 2011, the grievant was notified that her position was being restructured and relocated to the agency's central office in Richmond. The grievant was given the option of accepting this position, which the grievant declined due to the commuting distance. Because the position required the grievant's relocation, the agency invoked the provisions of the DHRM Layoff Policy.¹ As such, the grievant was separated from employment with the agency by layoff on April 29, 2011 and received severance benefits. The grievant has submitted her May 22, 2011 grievance to challenge the restructuring of her position and her resulting separation.²

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 essentially claims that the restructuring of her position may have been a misapplication or unfair application of policy.

¹ See DHRM Policy 1.30, *Layoff*.

² The grievant also raised an issue on her Grievance Form A regarding compensation for additional hours worked. Because the grievant initiated her grievance following her separation from employment, she only has access to the grievance procedure to challenge her separation. See *Grievance Procedure Manual* § 2.3. Consequently, the compensation issue is not a proper subject for this grievance and will not be addressed in this ruling.

³ See *Grievance Procedure Manual* § 4.1.

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

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 the intent of the applicable policy. Importantly, the grievance procedure accords much deference to management's exercise of judgment, including decisions as to what work units will be affected by layoff and the business functions to be eliminated or reassigned. Such matters are generally within the agency's discretion. Agency discretion is not without limitation, however. 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 only where the grievance 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.⁵

Based on a review of the submitted documentation, it does not appear that the agency's action violated a mandatory policy provision or was without a reasoned basis. Rather, the agency sought to restructure and relocate the grievant's position due to a stated "mission critical" need to centralize database functions to address ongoing problems with those systems. While the grievant may dispute the significant changes that were made to her job, it cannot be said that the agency lacked a reasoned basis for the restructuring or relocation. Nor has there been any evidence presented that the grievant was treated differently in this regard than other similarly situated employees at the agency. Moreover, the agency provided the grievant with the benefits available under the Layoff Policy, including severance benefits. For all the above reasons, this grievance fails to raise a sufficient question of whether the agency misapplied or unfairly applied policy. As such, this grievance does not qualify 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 the qualification determination to the circuit court, the grievant should notify the human resources office, in writing, within five workdays of receipt of this ruling and file a notice of appeal with the circuit court pursuant to Va. Code § 2.2-3004(E). 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.

Claudia T. Farr
Director

⁵ 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.