

Issue: Qualification – Management Actions (Recruitment/Selection); Ruling Date: February 1, 2012; Ruling No. 2012-3224; Agency: Department of Alcoholic Beverage Control; Outcome: Not Qualified.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Alcoholic Beverage Control
Ruling Number 2012-3224
February 1, 2012

The grievant has requested a qualification ruling in his September 8, 2011 grievance with the Department of Alcoholic Beverage Control (the agency). For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

The grievant has initiated his September 8, 2011 grievance to challenge a selection in which he competed unsuccessfully. While the grievant was granted an interview for the position, he was not included in the pool for a second round of interviews. The grievant argues that his veteran status was not taken into account and, therefore, he was inappropriately excluded from the next round of interviews. The agency essentially admits that the grievant's veteran status was not used in the determination of which candidates should proceed to the second round of interviews. In addition, the agency is unable to state whether the grievant's veteran status would have made a difference in the determination of whether he should have proceeded to the second round of interviews. However, the agency offered to provide the grievant with a second round interview even though the position has since been filled.

DISCUSSION

Although state employees with access to the grievance procedure may grieve anything related to their employment, only certain grievances qualify for a hearing.¹ Furthermore, this Department has recognized that even if a grievant's allegations are true there are still some cases when qualification is inappropriate even if law and/or policy has been violated or misapplied. For example, during the resolution steps, an issue may have become moot, either because the agency granted the specific relief requested by the grievant or an interim event prevents a hearing officer from being able to grant any meaningful relief. Additionally, qualification may be inappropriate when the hearing officer does not have the authority to grant the relief requested by the grievant and no other effectual relief is available.

¹ See *Grievance Procedure Manual* § 4.1.

It appears that this is a case in which the requested relief (a second round interview and consideration for selection) and indeed the remedy that would potentially be available at a hearing has already been granted. When there has been a misapplication of policy, a hearing officer could order that the agency reapply policy correctly. The effect of such an order in this case would be to put the grievant back in the position where the misapplication of policy occurred, i.e., just after the first round of interviews, and make the determination of who should proceed to the second round again. It is unclear whether even with the preferred qualification of the grievant's veteran status he would have been forwarded to the second round. However, the agency has gone one step further and assumed that the grievant might get to that level and has offered him an interview with the second round panel. Even though the subject position is now filled, the agency has indicated that it is willing to take whatever steps are necessary should the outcome of that second round interview impact the ultimate hiring decision.

Because a grievance hearing on this matter would be unable to provide the grievant any other relief beyond that which has already been granted, the grievance does not qualify for a hearing. Essentially, there is no point to holding a grievance hearing to determine whether the agency misapplied policy regarding the grievant's veteran status with respect to selection for a second round interview where, as here, the agency has sought to cure any alleged deficiency. This ruling does not mean that EDR deems the alleged conduct at issue, if true, to be appropriate, only that the grievance does not qualify for a hearing as the grievance procedure is unable to provide this grievant any further relief at this time.

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 this Department's 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 notifies the agency that he wishes to conclude the grievance.

Claudia Farr
Director