

Issue: Qualification – Management Actions (Recruitment/Selection); Ruling Date: August 23, 2012; Ruling No. 2013-3409; Agency: Department of Behavioral Health and Developmental Services; Outcome: Not Qualified.



*COMMONWEALTH of VIRGINIA*  
*Department of Human Resource Management*  
*Office of Employment Dispute Resolution*

**QUALIFICATION RULING**

In the matter of the Department of Behavioral Health and Developmental Services  
Ruling Number 2013-3409  
August 23, 2012

The grievant has requested a ruling on whether her June 5, 2012 grievance with the Department of Behavioral Health and Developmental Services (the agency) qualifies for a hearing. For the following reasons, this grievance does not qualify for hearing.

FACTS

The grievant initiated the June 5, 2012 grievance to challenge the agency's selection process for a position as a Security Officer III, in which she competed unsuccessfully. During the hiring process, the agency's selection panel interviewed seventeen applicants and selected ten to receive Security Officer III positions. The grievant states that the selection panel's assessment of the answers she provided to interview questions were unfair and untrue. The grievant argues that through her prior experience at the agency, she has been trained to do the type of work which would be required of a Security Officer; thus, one member of the panel's assessment that she lacks knowledge of security is inaccurate. Furthermore, she alleges that others hired in the Security Officer III positions had a lack of prior experience. The agency disputes the grievant's claims and states that it properly followed competitive selection procedures, and ultimately selected the best-suited candidates as determined by the selection process.

DISCUSSION

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 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.<sup>1</sup> In this case, the grievant essentially alleges a misapplication and/or unfair application of policy.

For an allegation of misapplication of policy or unfair application of policy to qualify for a hearing, there must be facts that raise a sufficient question as to whether management violated a mandatory policy provision, or whether the challenged action, in its totality, was so unfair as to

---

<sup>1</sup> Va. Code § 2.2-3004(C); *Grievance Procedure Manual* § 4.1(c).

amount to a disregard of the intent of the applicable policy. State hiring policy is designed to ascertain which candidate is best suited for the position, not just to determine who might be qualified to perform the duties of the position.<sup>2</sup> Moreover, the grievance procedure accords much deference to management's exercise of judgment, including management's assessment of applicants during a selection process. Thus, a grievance that challenges an agency's action like the selection in this case does not qualify for a hearing unless there is sufficient evidence that the resulting determination was plainly inconsistent with other similar decisions by the agency or that the assessment was otherwise arbitrary or capricious.<sup>3</sup>

The grievant has not cited to any policy provisions violated by the agency, rather, she argues that she was evaluated unfairly by the selection panel. In this instance, the selection panel was composed of two individuals, neither of whom recommended grievant for a Security Officer III position. Both members of the selection panel recorded the grievant's responses to questions asked of her in the interview and both noted the instances wherein they believed that grievant's answers did not sufficiently indicate necessary knowledge regarding the duties of the Security Officer III position. In particular, it appears that the grievant's answers to two scenario-based questions lacked key elements that would demonstrate her knowledge and understanding of security principles. Although the grievant may reasonably disagree with the panel's assessment, EDR has reviewed nothing that would suggest the agency's determination disregarded the pertinent facts or was otherwise arbitrary or capricious. The foundations for the panel's assessment of the grievant's knowledge, namely, the interview questions and answers provided by the grievant, appear reasonable and based upon potential situations with which a Security Officer may be confronted. Agency decision-makers deserve appropriate deference in making such determinations regarding a candidate's knowledge, skills, and abilities.

Further, the grievant argues that others who "had never done this type of work" were hired into Security Officer III positions. To this, the agency responds that all of the individuals hired for the Security Officer III positions had the requisite experience necessary to gain an interview for the position, and that the level of experience was used as a screening tool, but did not in and of itself guarantee a successful interview. The grievant has not presented sufficient evidence to support an assertion that she was so clearly a better candidate that the selection of successful candidates disregarded the facts or was otherwise arbitrary or capricious. Instead, it appears that the agency employees on the selection panel based their determinations on good faith assessments of the grievant. This grievance does not raise a sufficient question as to whether the agency misapplied and/or unfairly applied policy or as to whether the grievant was subject to arbitrary or capricious review; therefore, it does not qualify for a hearing.

#### APPEAL RIGHTS AND OTHER INFORMATION

EDR's qualification rulings are final and nonappealable.<sup>4</sup> The nonappealability of such rulings became effective on July 1, 2012. Because the instant grievance was initiated prior to

---

<sup>2</sup> See Department of Human Resource Management (DHRM) Policy No. 2.10, *Hiring*.

<sup>3</sup> See *Grievance Procedure Manual* § 9. Arbitrary or capricious is defined as a decision made "[i]n disregard of the facts or without a reasoned basis."

<sup>4</sup> Va. Code § 2.2-1202.1(5).

that date, it is not EDR's role to foreclose any appeal rights that may still exist for the grievant under prior law. If the grievant wishes to attempt 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 former Va. Code § 2.2-3004(E). EDR makes no representations as to whether such an appeal is proper or can be accepted by the circuit court. Such matters are for the circuit court to decide. 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.



---

Christopher M. Grab  
Senior Consultant  
Office of Employment Dispute Resolution