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**QUALIFICATION RULING**

In the matter of the Department of Social Services  
Ruling Number 2023-5568  
April 26, 2024

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) on whether her April 4, 2023 grievance with the Virginia Department of Social Services (the “agency”) qualifies for a hearing. For the reasons discussed below, this grievance is not qualified for a hearing.

**FACTS**

The grievant filed an expedited grievance on April 4, 2023 due to an email she received that day stating that leave-without-pay (“LWOP”) entries spanning from July 5, 2022 through January 5, 2023 were insufficiently inputted and needed to be reviewed. The agency later determined that the inaccurate LWOP entries resulted in an overpayment and that the grievant required pay docking on subsequent pay periods.

The grievant adds that on February 6, 2023, she received an email from the Payroll Services Bureau (“PSB”) at the Virginia Department of Accounts informing her that they would be withholding \$559.39 for the next eight pay periods beginning with the February 16, 2023 paycheck to cover her LWOP hours from April 10, 2022 through September 24, 2022, as well as \$520.98 that was already withheld from her January 16, 2023 paycheck, totaling \$4,996.10 to be withheld. The PSB further amended this amount in an email sent on June 7, 2023, stating that they would be “docking \$442.62 for the next 6 [pay periods],” with the total docking amount stated as \$2,535.74. The grievant contends that the amounts being recouped from her paychecks are inaccurate, and that an audit is necessary to determine the accurate amount so she can be reimbursed for any excessive recoupment. Specifically, the grievant alleges that \$622.77 was recouped from her January 16, 2023 paycheck, not \$520.98, because they based the recoupment on her former, lower salary. She later added after the initial filing of the grievance that the total amount recouped reflected on her most recent paycheck at the time (June 1, 2023 paycheck) was \$4,897.74.

In addition to the issue of overpayment, the grievant has added that she has continued to experience troublesome delays and lack of clarity in communication between her, the agency’s health benefits department, and the third-party administrator (“TPA”) for disability claims.

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For relief, the grievant originally requested a complete audit of all overpayments through January 2023 and an opportunity to review and discuss the findings, credit given towards the overpayment for the alleged difference of \$101.79 from her January 16, 2023 paycheck, and to know the exact date of when her benefits (Aflac) will be up-to-date and when alleged double payments will no longer be withheld.

While this ruling was pending with EDR, an audit was processed by the PSB. The audit appears to conclude that the grievant was underpaid a total of \$237.47, in consideration of the full sequence of events, and that the amount was paid to her in the February 9, 2024 pay period, which the grievant has confirmed. Upon being given a copy of the audit, the grievant expressed to EDR that the recoupment amount is still inaccurate and has since requested relief in the form of “[t]he difference between the official agency response, the amount recouped by PSB, less that amount that PSB has already sent [her],” as well as “[r]estoration of ANY leave that should have accrued during [her] leave without pay time that SHOULD have been also paid out as STD benefits.”

### DISCUSSION

Although state employees with access to the grievance procedure may generally grieve anything related to their employment, only certain grievances qualify for a hearing.<sup>1</sup> Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.<sup>2</sup> Thus, claims relating solely to the establishment and revision of salaries, wages, and general benefits generally do not qualify for a hearing, unless the grievant presents evidence raising a sufficient question as to whether discrimination, retaliation, or discipline may have improperly influenced management’s decision, or whether state or agency policy may have been misapplied or unfairly applied.<sup>3</sup> The grievant has not alleged any issues of discrimination or retaliation. Consequently, this grievance can only qualify for a hearing if the agency has misapplied or unfairly applied policy. For an allegation of misapplication of policy or unfair application of policy to qualify for a hearing, the available facts must 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 amount to a disregard of the applicable policy’s intent.<sup>4</sup>

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve “adverse employment actions.”<sup>5</sup> Thus, typically, a threshold question is whether the grievant has suffered an adverse employment action. For purposes of this ruling only, EDR will assume that the grievant has alleged an adverse employment action because the grievance asserts issues with overpayment recoupment, if it were found to be in violation of policy.

#### *Overpayment Recoupment*

The grievant argues, in effect, that the agency misapplied or unfairly applied state policy and/or law by not adhering to the amount they originally stated they would recoup from the grievant’s paychecks. This appears to be in reference to the email the grievant received from the

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<sup>1</sup> See *Grievance Procedure Manual* §§ 4.1 (a), (b).

<sup>2</sup> See Va. Code § 2.2-3004(B).

<sup>3</sup> *Id.* § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).

<sup>4</sup> See, e.g., EDR Ruling No. 2022-5309.

<sup>5</sup> See *Grievance Procedure Manual* § 4.1(b).

PSB on February 6, 2023, detailing the pay docking described above, which was subsequently added to as described in the June 7, 2023 email from the PSB. Combining the initial \$520.98 from the January 16, 2023 paycheck, the \$559.39 recouped for eight pay periods, and the \$442.62 for the final six pay periods, the total planned recoupment comes to \$7,651.82, well beyond the amount the agency stated would be recouped initially. The grievant confirmed that the pay docking with the \$442.62 amount began with the June 16, 2023 pay period, with the last amount being recouped on September 1, 2023. In addition to agency correspondence, the agency appears to have conducted a reconciliation of benefits, finding that the grievant was overpaid a total of \$2,713.75 as a result of LWOP days, as well as an additional \$1,804.03 in overpayment for using the incorrect income replacement amount, resulting in a total overpayment of \$4,517.78. After a thorough analysis of the record, it appears that this is the “official” amount of recoupment noted by the agency.

While the official recoupment amounts stated by the agency vary quite a bit and are troublesome to follow, the grievant ultimately contends that the amount that was actually recouped from her paychecks was significantly more than the agency’s officially stated amount. After the PSB completed and shared an audit on or about January 29, 2024, it was found that the grievant was underpaid a total of \$237.47. Along with the audit, the PSB included a thorough explanation of how and when the grievant was overpaid and underpaid, what went wrong in the initial stages of recoupment, and how they determined what outstanding amount, if any, was owed to her at the time of the audit. While the grievant noted that the \$237.47 has since been paid to her in a subsequent paycheck, she still contends the remaining discrepancy that was originally noted between the official agency response and the amount actually recouped by the PSB.

Upon a thorough review of all the evidence presented by the parties, EDR cannot conclude that the grievance presents a sufficient question of whether the agency has misapplied or unfairly applied policy in recovering its overpayment of the grievant’s salary such that this grievance qualifies for a hearing. The audit conducted by the PSB, along with their explanation of all that happened, sufficiently addresses the overpayment issue and EDR cannot find any evidence to contradict their findings. For example, it was found that the grievant was incorrectly paid at 100% salary for days she was on short-term disability, when she should have been paid at 60% salary. The agency did not provide the grievant the proper LWOP usage form until October 28, 2022, months after the grievant was using her short-term disability leave, hence the incorrect usage of 100% salary. In addition, the PSB noted that “[t]he agency did not monitor the employee timesheets to ensure outstanding unapproved leave was cleared and subsequently resulted in the employee being overpaid further.” The PSB conducted an initial audit on or about October 12, 2023, and upon its results notified the agency that “there remained pay periods [(November 9 and December 24, 2022)] when scheduled hours were not fully accounted for so the audit could not be finalized.” Pursuant to communication with EDR and the agency, the PSB finalized the audit on or about January 29, 2024, after it was able to review the November 9 and December 24, 2022 pay periods, and determined from the unaccounted hours of those pay periods that the grievant was underpaid \$237.47.

Upon being given a copy of the January audit, the grievant continues to argue that the original noted discrepancy of nearly \$2,500 is still owed to her. However, EDR has not been presented with information that would raise a sufficient question to contradict the legitimacy of the recently completed audit by the PSB, and by extension the recoupment implemented by the agency. The Department of Accounts and the PSB provides agencies with accounting guidance

that they are required to follow, which includes guidance on overpayments.<sup>6</sup> Regardless of errors, such as inconsistencies in communication or waiting until several months have passed to properly submit reported LWOP hours, the agency is obligated to correct timesheets and collect any overpayments that resulted from errors.<sup>7</sup> In essence, such corrections are not only under the broad discretion of the agency to correct as needed, but are required by the Department of Accounts to remedy whenever an error surfaces. Although we understand the grievant's frustration and observe that the record suggests a lack of clarity in the agency's discussions with the grievant about the proper procedures for reporting LWOP hours, in addition to not providing a clear and consistent amount to be recouped by the agency, we find nothing to suggest that the agency's ultimate actions with respect to the overpayment and rescission of such overpayment violated any policy mandate or disregarded any applicable policy's intent. The audit and subsequent repayment to the grievant has since remedied any potential misapplication of policy on behalf of the agency, and EDR adheres to the calculations made by the PSB.

In conclusion, upon a thorough review of the record, EDR is unable to identify a sufficient question as to whether the agency misapplied or unfairly applied state or agency policy in the circumstances presented in this case. Accordingly, the grievance does not qualify for a hearing.

#### *Restoration of Leave*

In the grievant's updated requested relief, she requests "[r]estoration of ANY leave that should have accrued during [her] leave without pay time that SHOULD have been also paid out as STD benefits."<sup>8</sup> Based on the original grievance, it appears that the grievant is contending that her annual leave did not accrue properly while on short-term disability from March 30, 2022 through July 2022, or was not credited afterward.<sup>9</sup> While we concur with the grievant that it is possible that her leave has not been accounted for accurately, we also have not been able to identify information in the grievance record that reflects such an inaccuracy. For instance, the grievant indicates that she did not accrue leave properly after March 30, 2022. However, documentation in the grievance record reflects annual leave accruals through April, May, and June 2022. Further, it appears that the agency conducted a leave audit earlier in the process of the grievance. The agency has indicated that the grievant accrued the leave to which she was entitled and did not accrue during the periods she was not entitled to leave.<sup>10</sup> For these reasons, EDR is unable to identify a sufficient question as to whether the agency misapplied or unfairly applied policy regarding the accumulation of leave, or as to whether the agency did so regarding the administering of disability benefits.

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<sup>6</sup> See *Commonwealth Accounting Policies and Procedures Manual*, "Unpaid Leaves of Absences and Overpayments." According to the *Manual*, agencies should establish written policies and procedures for the recovery of overpayments and provide these policies to employees. *Id.* at 5.

<sup>7</sup> *Id.*

<sup>8</sup> To the extent the grievant is arguing that there were periods of time she was eligible for but did not receive STD benefits, such information has not been presented to EDR. Further, such matters would properly be within the purview of the TPA under the Virginia Sickness and Disability Program. If the grievant had an STD claim that was denied, she could have appealed that determination through the TPA and/or through appropriate legal action. EDR cannot determine matters as to whether the grievant was denied STD benefits.

<sup>9</sup> The grievant has also expressed throughout the grievance and qualification process that it has been significantly and exceedingly difficult to correspond with the TPA responsible for the grievant's disability benefits. While we sympathize with the grievant's concerns, this portion of her grievance does not present an independent basis that qualifies for a hearing on its own.

<sup>10</sup> For example, employees do not accrue annual leave during any pay period in which they were on leave without pay. DHRM Policy 4.10, *Annual Leave*, at 4.

EDR's qualification rulings are final and nonappealable.<sup>11</sup>

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<sup>11</sup> See Va. Code § 2.2-1202.1(5).