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QUALIFICATION RULING

In the matter of the Department of Juvenile Justice
Ruling Numbers 2025-5830, 2025-5861, 2025-5891
June 16, 2025

The grievant seeks a ruling from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management as to whether three grievances she filed with the Department of Juvenile Justice (the "agency") qualify for a hearing. For the reasons set forth below, EDR finds that one of the grievances, filed on February 12, 2025 (referred to as "Grievance 2" in this ruling), is partially qualified for a hearing. The other two grievances are not qualified.

FACTS

On or about December 13, 2024, the grievant submitted a grievance ("Grievance 1") challenging the agency's decision to require her to work three days per week in person at an office ("Facility 1") over 100 miles from her home. It appears that, on October 25, 2024, the agency head announced a change to telework approvals for agency employees – specifically, that the agency would be "eliminating remote work for some staff and limiting . . . telework approvals to one day a week for telework eligible positions across the agency, effective January 1, 2025." The grievant asserted that, since her hire, she had worked only one day per week in person. In her grievance, she claimed the agency had begun requiring her to work four days per week in person, including three days at Facility 1, which involved "a 2 hour commute each way." As relief, the grievant requested "an exception [to the agency's policy change] that permits [her] to work consistently from one nearby [agency] location during all 4 required in office days."

The grievance proceeded through the management steps, with each respondent indicating they were unable to grant relief. The agency head likewise confirmed that the grievant was not eligible for an exemption to the general remote work requirements, although the agency head also reiterated that the grievant was approved to work at an office closer to home once per week and also that temporary office space "has been offered to you once per week." The agency head ultimately declined to offer additional relief or to qualify the grievance for a hearing.

On February 12, 2025, the grievant submitted another grievance ("Grievance 2")[1] alleging that her supervisor "continues to create a hostile work environment by being rude and

[1] Grievance 2 was the subject of EDR Ruling Number 2025-5843, which addressed the agency's contention that Grievance 2 was duplicative with Grievance 1. EDR concluded that Grievance 2 could not proceed "to the extent it

condescending for the purpose of retaliation." According to the grievant, she first initiated a complaint regarding her supervisor's workplace conduct on September 16, 2024. Although the agency indicated that her complaint had been addressed, the grievant claims that her supervisor continued to treat her adversely, such as by assigning her to work in a cubicle without necessary job equipment (rather than a fully-equipped office) and by removing the grievant's computer monitor, "invad[ing her] space and aggressively tak[ing] the monitor out of [her] hands." Relatedly, the grievant challenged her supervisor's comments on her most recent annual performance evaluation, which the grievant asserted were an attempt to "get back at" the grievant for raising concerns about her work situation to other employees.

Also in Grievance 2, the grievant asserted that she requested a salary review after learning that the rest of her team was in Pay Band 5, while her position was in Pay Band 4 with a salary $15,000 lower while "doing equivalent work." The grievant alleges that her request was essentially denied, and during those communications the grievant's supervisor unfairly counseled her for lack of professionalism. As relief, she requested "a salary review and to be brought up to a comparable rate as my counterparts."

In response, agency management affirmed that it was still in the process of addressing workspace and equipment issues such as those raised in Grievance 2, and also that the grievant's concern about her supervisor "was taken seriously, investigated and all violations of policy will be addressed" in accordance with state and agency policy. As to the salary issue, management responded that an agency-wide study had just been conducted to ensure alignment with respect to years of experience. Management reiterated that "[a] salary review can be requested through your chain of command." The agency head declined to grant further relief or qualify Grievance 2 for a hearing.

On or about March 25, 2025, the grievant filed another grievance ("Grievance 3"), in which she cited instances of ongoing retaliatory behavior by her supervisor. As the single management step, a deputy director addressed several of the grievant's concerns about interactions with her supervisor and recounted that a meeting between the deputy director, supervisor, and grievant "was facilitated, and unfortunately, a path [toward successful resolution] could not be developed." The deputy director also noted alleged concerns about the grievant's performance, such as "engaging in unprofessional and inappropriate conversations, unsatisfactory work performance, failure to follow your chain of command, failure to follow management directives, and insubordination." As a result of these concerns, the deputy director concluded, the grievant would be transferred to a position as a probation officer at a facility closer to her home ("Facility 2"). The deputy director further indicated that the grievant's "pay will not be impacted." The agency head declined to grant further relief or to qualify Grievance 3 for a hearing.

The grievant has appealed each of the agency head's qualification determinations in Grievances 1, 2, and 3 to EDR.

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seeks to challenge the agency's decision to deny the grievant's telework request and assign her to a particular work location" but could proceed as to "all other issues." EDR Ruling No. 2025-5843, at 3.

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.[2] Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.[3] Thus, claims relating to issues such as the means, methods, and personnel by which work activities are to be carried out 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 policy may have been misapplied or unfairly applied.[4]

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions."[5] Thus, typically, the threshold question is whether the grievant has suffered an adverse employment action that could be remedied by a hearing officer. An adverse employment action involves an act or omission by the employer that results in "harm" or "injury" to an "identifiable term or condition of employment."[6] Workplace harassment rises to this level if it includes conduct that is "sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment."[7]

Finally, qualification may not be appropriate even if a grievance challenges a management action that might ordinarily qualify for a hearing. For example, an issue may have become moot during the management resolution steps, 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.[8]

Moot Issues

As an initial matter, EDR concludes that the grievant's transfer to a new position renders several issues raised in the three grievances moot. According to the grievant, the transfer has resolved, at least for practical purposes, the grieved issues regarding telework, workspace/site problems, and a hostile work environment allegedly created by her now-former supervisor. As to the latter issue, the grievant has confirmed to EDR that, following the transfer, she is no longer subject to hostile conduct by her former supervisor because they no longer work together, or even

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[2] *See Grievance Procedure Manual* § 4.1.
[3] Va. Code § 2.2-3004(B).
[4] *Id.* § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).
[5] *See Grievance Procedure Manual* § 4.1(b); *see* Va. Code § 2.2-3004(A).
[6] *See* Muldrow v. City of St. Louis, 144 S. Ct. 967, 974 (2024) (addressing a required element of a Title VII discrimination claim); *see, e.g.*, Burlington Indus. v. Ellerth, 524 U.S. 742, 761 (1998) (defining adverse employment actions under Title VII to include "tangible" acts "such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits").
[7] Strothers v. City of Laurel, 895 F.3d 317, 331 (4th Cir. 2018) (citing Meritor Sav. Bank, FSB v. Vinson, 477 U.S. 57 (1986)).
[8] *See, e.g.*, EDR Ruling No. 2017-4477; EDR Ruling No. 2017-4509.

in the same facility. As a result, there would not appear to be any further relief a hearing officer could provide as to this issue. Accordingly, none of the grievances qualify for a hearing to the extent that they challenge the agency's actions with respect to telework, work assignments, and/or a hostile work environment at the former position under the former supervisor. Moreover, as the latter issue is the only issue raised by Grievance 3, Grievance 3 is not qualified for a hearing.

Other Issues Not Qualified

Other issues raised in the grievances that are not qualified for a hearing are (1) the grievant's claimed expenses related to her commute to Facility 1, and (2) challenges to her performance evaluation.

In Grievance 1, the grievant challenged the agency's requirement for her to work in-person at a site 100 miles from her home. As alternatives, the grievant proposed working in-person at other agency facilities, and/or being compensated for her commuting mileage. Following her transfer to Facility 2, the grievant has confirmed she believes she remains entitled to mileage she incurred to commute to work in person at Facility 1. For purposes of our analysis, we assume that this issue sufficiently asserts an adverse employment action, as the grievant claims she is entitled to compensation from the agency and has not received it due to a misapplication or unfair application of policy. Such a claim may qualify for a hearing if the available facts 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.[9]

Upon a thorough review of the record and applicable state policies, EDR finds no policy to indicate that the grievant could be entitled to a mileage or other travel reimbursement for her commute. In fact, the *Commonwealth Accounting Policies and Procedures (CAPP) Manual* published by the Department of Accounts suggests that granting the grievant's mileage reimbursement request under the circumstances would not have been consistent with state travel regulations. Those regulations state:

> Round-trip mileage traveled routinely and directly by the employee between his/her residence and base point incurred on a scheduled workday is considered commuting mileage. An employee can have only one assigned base point. Commuting mileage and other commuting costs incurred on a scheduled workday are considered a personal expense and are not reimbursable.[10]

The regulations would also appear not to support the grievant's suggestion that the agency could designate a base point closer to her home, from which she could then travel to other assigned work locations such as Facility 1. The travel regulations define a "base point" as the "primary place,

[9] *See, e.g.*, EDR Ruling No. 2022-5309.
[10] *Commonwealth Accounting Policies and Procedures*, Section 20300, Topic 20335, "State Travel Regulations," at 6, available at www.doa.virginia.gov/reference/CAPP/CAPP_Topics_Cardinal/20335-2025-January.pdf. Although these regulations were updated as of January 1, 2025, the provisions cited herein match those that were previously in effect.

office, or building where the traveler performs his/her duties on a routine basis."[11] Although the grievant disagreed with the agency's determination that she should work primarily from Facility 1, that determination would appear to foreclose other locations from being the grievant's "base point" for purposes of designating the grievant's travel as reimbursable work travel, as opposed to personal, non-reimbursable commuting. Because we find no applicable policy support for the grievant's claim to mileage reimbursement to Facility 1, and because the grievant's worksite in itself is now a moot issue, this issue is not qualified for a hearing.

In addition, EDR concludes that the grievant's claims regarding her performance evaluation, as articulated in Grievance 2, do not qualify for a hearing. In general, a satisfactory performance evaluation is not an adverse employment action.[12] Even if one or more "Below Contributor" sub-ratings on an overall satisfactory evaluation could be an adverse employment action in some circumstances, "a poor performance evaluation is actionable only where the employer subsequently uses the evaluation as a basis to detrimentally alter the terms or conditions of the recipient's employment."[13]

Here, the grievant's overall performance rating on her 2024 annual evaluation was "Contributor." In three performance categories constituting 85 percent of her job duties, the grievant received "contributor" sub-ratings. However, the grievant takes issue with two "Below Contributor" sub-ratings in the performance categories of "general juvenile record" (5 percent) and "develop strategies, tools, and processes to support the QA work through building a QA culture and framework to inform practice and system reform" (10 percent). The grievant alleges that these sub-ratings and their purported justifications are inaccurate and/or retaliatory. For example, the grievant points to commentary in the "QA culture" category that explicitly reprimands her for "openly discuss[ing] concerns about her role and perceived disparities with coworkers" and "ma[king] negative statements to coworkers." Although the grievant's concerns about these comments as an appropriate basis for a "Below Contributor" rating are understandable, they ultimately do not meet the threshold standard to qualify for a hearing, as they do not, in and of themselves, appear to implicate or harm an identifiable term or condition of the grievant's employment. Accordingly, issues related to the grievant's overall satisfactory annual performance rating do not qualify for a hearing.

Qualified Issue

The remaining issue identified in the three grievances that are the subject of this ruling is the grievant's challenge to her salary and pay band, which she raised in Grievance 2. As to this

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[11] *Id.*

[12] *E.g.*, EDR Ruling No. 2013-3580; EDR Ruling No. 2010-2358; EDR Ruling No. 2008-1986; *see also* James v. Booz-Allen & Hamilton, Inc., 368 F.3d 371, 377-378 (4th Cir. 2004) (holding that, while an employee's performance rating was lower than on his previous evaluation, there was no adverse employment action where he failed to show that the evaluation was used as a basis to detrimentally alter the terms or conditions of his employment).

[13] *James*, 368 F.3d at 377 (citation and internal quotation marks omitted). Although DHRM Policy 1.40, *Performance Planning and Evaluation*, establishes remedial procedures for substandard performance, these procedures do not apply unless an employee's *overall* performance rating is "Below Contributor." Policy 1.40 does not mandate any adverse results for a "Below Contributor" sub-rating where the overall rating is satisfactory.

issue, the record shows that, on November 19, 2024, the grievant made the following inquiry to agency classification and compensation staff:

> I would like clarification as to why my position is classified as a pay band 4 when my co-workers (we all do pretty much the same thing in different areas of the agency) are at pay band 5. I am the most educated and least compensated person on my team. . . .
>
> I'd just like my salary reviewed in reference to my education, experience, and new role.

Receiving no response, the grievant followed up on her request on January 8, 2025. The classification and compensation staff responded that the grievant should make such requests through her supervisor:

> At this time, salary reviews are not being conducted. The recent salary study has been completed, and the results are final. For awareness, I have copied your supervisor on this message.

In a subsequent exchange, the grievant explained that she had been told that classification and compensation staff were the appropriate recipients of salary inquiries, concluding with: "It would be really helpful for everyone to be on the same page but ok sounds good." The grievant's supervisor then emailed the grievant separately to offer discussion regarding the grievant's inquiries. The supervisor also counseled the grievant for being "unprofessional" in her message that staff should be "on the same page." On January 13, 2025, the grievant responded that, due to her active retaliation complaint against the supervisor, she was not comfortable discussing the issues with her supervisor without a "neutral third party."

The grievant then renewed her request for a salary review via Grievance 2, dated February 12, 2025, alleging that "my team is on pay band 5 and I am on pay band 4 when we are doing equivalent work. . . . I continue to do all the work outlined in my EWP and still make $15,000.00 less than my counterparts." As relief, the grievant specifically requested "a salary review and to be brought up to a comparable rate as my counterparts." The agency's single management respondent addressed this request as follows:

> The agency recently conducted an agency-wide study and processed in-band adjustments for those who were not being compensated in alignment with their years of experience in their particular role and salary range. This pay factor analysis is conducted every two years to ensure that all employees are being paid accurately and equitably. However, it is important to follow the chain of command prior to reaching out for guidance or direction from other units. A salary review can be requested through your chain of command.

Ultimately, even though the record shows that the grievant repeatedly requested a salary review beginning in November 2024, based on specifically articulated concerns about inequitable pay on

her team, EDR has no indication that the agency ever addressed the grievant's specific questions and concerns about her salary as compared to others on her team. Instead, as reflected in the record for Grievance 3, management transferred the grievant to another position with no change to her pay. The motivation for the transfer is not entirely clear from the record, but management communications to the grievant indicate that the reasons included both performance concerns and also granting the grievant's requested relief to be removed from her former supervisor's chain of command and to work closer to her home. In interviews with EDR, the grievant has acknowledged that the transfer addressed some of the primary issues she had raised. However, she noted that the transfer also had the effect of dismissing her salary concerns, by simply removing her from a situation in which she arguably had grounds to request a higher salary.

The agency has stood by its biannual agency-wide review and also contends that the grievant's alleged comparators are properly classified in higher roles (Program Specialist II, Pay Band 5) than she was (Program Specialist I, Pay Band 4), meriting different pay bands and salaries. Upon our review of the grievant's former EWP and that of a purported comparator classed at Program Specialist II, the latter's documented duties do include certain oversight and implementation responsibilities not expressly included in the grievant's former EWP. However, upon review of the specific listed responsibilities in both EWPs, both positions are heavily tasked with similar responsibilities involving collaboration, facilitation, providing feedback, analysis, and problem-solving. In addition, the grievant has argued that the actual day-to-day activities performed by the Program Specialists are not functionally different, much less to an extent that would support a salary difference of $15,000, or more than 20 percent. Essentially, then, she argues that the EWPs did not reflect the actual work done by the employees in those respective positions, which may not have been captured in the agency-wide salary study.

The agency has not provided additional information that might further explain why the grievant, in her former position, was classified in a lower role and allegedly compensated at a substantially lower rate. Our review of the positions at issue thus presents a sufficient question as to whether the grievant was appropriately classified as a Program Specialist I, in comparison to her coworkers classified as Program Specialist IIs. Thus, EDR is unable to conclude with confidence that the grievant was compensated consistent with DHRM Policy 3.05, as compared with her former team members. Moreover, to the extent the grievant was improperly classified or compensated in her role as a QA Specialist, the transfer to her current position as a parole officer at Pay Band 4, with the same pay, could arguably constitute an effective demotion. Because EDR is unable to resolve the divergent positions offered by the parties on the record before us, this issue is qualified for a hearing.

CONCLUSION

For the foregoing reasons, Grievance 1 is not qualified for a hearing, as the issues raised therein are either moot or do not sufficiently allege a misapplication or unfair application of policy. Grievance 3 is also not qualified, as the issue raised therein appears to be moot. Grievance 2 is partially qualified, to the extent it alleges that the grievant was not compensated and/or classified in line with appropriate comparators and other pay factors articulated in DHRM Policy 3.05. To the extent the grievant wishes to advance claims that the agency's motivations in determining her

pay were improper, such claims would be within the scope of this qualified issue, subject to the hearing officer's discretion to exclude irrelevant evidence. At the hearing, the grievant will have the burden to prove that the agency's classification/compensation actions were not consistent with policy, as well as the appropriateness of any relief sought.[14]

Within **five workdays** of receipt of this ruling, the agency shall request the appointment of a hearing officer to hear the issue qualified for hearing, using the Grievance Form B. This ruling is not intended to prevent or discourage the parties from resolving the underlying issues outside the context of a hearing.

EDR's qualification rulings are final and nonappealable.[15]

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[14] *Grievance Procedure Manual* § 5.8; *Rules for Conducting Grievance Hearings* § VI(C).
[15] Va. Code § 2.2-1202.1(5).