



JANET L. LAWSON
DIRECTOR

COMMONWEALTH OF VIRGINIA
Department Of Human Resource Management
Office of Employment Dispute Resolution

James Monroe Building
101 N. 14th Street, 12th Floor
Richmond, Virginia 23219
Tel: (804) 225-2131
(TTY) 711

QUALIFICATION RULING

In the matter of the Department of Behavioral Health and Developmental Services
Ruling Number 2025-5870
June 2, 2025

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 February 25, 2025 grievance with the Department of Behavioral Health and Developmental Services (the “agency”) qualifies for a hearing. For the reasons discussed below, the grievance does not qualify for a hearing.

FACTS

The grievant is employed as a human resources (HR) generalist for the agency at one of its facilities. In December 2023, she raised the issue to the agency that she felt her relevant years of experience (RYE) as calculated by the agency were not accurate. She was then told by the agency that they could not consider work experience not documented in an application or resume when applying for a position. The grievant was encouraged to submit an updated resume or a complete application should she apply for another job so that her RYE “can be reviewed should there ever be an alignment or if selected for another position.” Sometime the following year, she applied for and was offered the recruiter position at the facility. The day she was offered the position, she was reportedly told that it would be a lateral move with no additional compensation. The grievant claims that after she received the offer, she requested a review of her current application and resume believing her application was not reviewed during the selection process. She additionally argued to the agency that the recruiter position was not in fact a lateral move. The agency then apparently reviewed her updated resume and RYE and provided a new offer with a salary increase of \$2,527.¹ Believing that this offered salary was still too low based on her experience, the grievant made a counteroffer of a 10% salary increase (\$6,782). After the agency rejected this counteroffer, the grievant chose to not accept the position.

On January 29, 2025, while performing her job duties of onboarding and entering information for the new recruiter who accepted the position, she apparently discovered an error in his RYE calculation that prompted her to review her own RYE. She asserts that her RYE was missing relevant experience. She states that three of her previous clerical positions, such as her HR

¹ The agency states that this salary increase would have brought the grievant in alignment with another HR Analyst I at the facility with similar years of experience, although the other HR analyst had more educational qualifications.

assistant role at the facility from 2012 – 2015, were not included in the agency’s RYE calculation, and that these missing clerical roles should have been calculated at 50%.² She believes that, if her RYE was calculated correctly, it is likely that she would have been given a higher salary offer. Thus, she argues that, but for the agency’s alleged miscalculation of her RYE, she would have accepted the position offer with a higher salary. As relief, the grievant requests that her RYE be reviewed, corrected based on her own RYE calculation, and her salary reflect her current RYE.

On or about February 25, 2025, the grievant filed this grievance contesting the issue. The grievance proceeded through the management resolution steps with the step respondents denying relief. The first step respondent noted that while the grievant’s argument about not all of her experience being considered has validity, the specific argument should have been presented during salary negotiations. The agency has added that the grievant’s RYE is only guidance for determining starting salary that does not guarantee a specific compensation adjustment, and that it is one of several pay factors. The agency head has declined to qualify the grievance for a hearing. The grievant now appeals that determination to EDR.

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.³ The grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.⁴ 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.⁵ 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 amount to a disregard of the intent of the applicable policy.

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve “adverse employment actions.”⁶ 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.”⁷ For purposes

² The other clerical positions she claims were excluded are a staff scheduler/trainer role (2015 – 2016) at the same facility and a front desk receptionist from 1996 – 1997. She also mentions her time as a unit supervisor and assistant program manager at the facility, but does not indicate the percentage (if any) at which these positions should have been calculated for RYE.

³ See *Grievance Procedure Manual* §§ 4.1 (a), (b).

⁴ See Va. Code § 2.2-3004(B).

⁵ *Id.* § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).

⁶ See *Grievance Procedure Manual* § 4.1(b); see Va. Code § 2.2-3004(A).

⁷ 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”).

of this ruling only, EDR will assume that the grievant has alleged an adverse employment action to the extent the grievant's pay is impacted by a misapplication of policy.

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

The grievant's primary argument is that, but for the agency's alleged inaccurate calculation of her RYE, she would have accepted the recruiter position offer, assuming the offer would come with a higher starting pay. She argues that, despite the agency stating in 2023 that they would review her RYE pursuant to another alignment or job offer, they did not review her application and resume until after she requested that they do so following the initial offer. After reviewing the grievant's resume and recalculating her RYE, the agency offered her a starting pay increase of \$2,527. Feeling this amount still did not accurately reflect her RYE, the grievant proposed a counteroffer of an increase of \$6,782, which the agency declined. The grievant has asserted that she has experience in calculating RYEs, and has provided evidence of her resume in comparison with the RYE considered by the agency. Presuming the version of the grievant's resume that was provided to EDR was also submitted as part of her application for the recruiter position, it appears that there may have been relevant positions on the grievant's resume that are not reflected on the RYE documentation provided by the agency.

DHRM Policy 3.05, *Compensation*, is relatively broad when discussing the requirements of agencies in overseeing pay actions. In particular, it states that agencies must "conduct[] market and/or salary alignment studies on a periodic basis as needed" and "continuously review[] agency compensation practices and actions to ensure that similarly situated employees are treated consistently"⁹ In addition, Policy 3.05 also allows for "flexible" starting-pay guidelines to attract a "highly skilled, competent workforce."¹⁰ Like all pay practices, salary questions like those at issue in this grievance emphasize merit, rather than entitlements such as across-the-board increases, while providing management with great flexibility and a high degree of accountability for justifying their pay decisions.¹¹ Although DHRM Policy 3.05 reflects the intent that similarly situated employees should be comparably compensated, it also invests agency management with broad discretion to make individual pay decisions in light of 13 enumerated Pay Factors: (1) agency business need; (2) duties and responsibilities; (3) performance; (4) work experience and education; (5) knowledge, skills, abilities and competencies; (6) training, certification and licensure; (7) internal salary alignment; (8) market availability; (9) salary reference data; (10) total compensation; (11) budget implications; (12) long term impact; and (13) current salary.¹² Because agencies are afforded great flexibility in making pay decisions, EDR has repeatedly held that qualification is warranted only where evidence presented by the grievant raises a sufficient

⁸ See, e.g., EDR Ruling No. 2021-5261; EDR Ruling No. 2017-4477.

⁹ DHRM Policy 3.05, *Compensation*, at 2.

¹⁰ *Id.*.

¹¹ See DHRM Human Resource Management Manual, Ch. 8, *Pay Practices*.

¹² See DHRM Policy 3.05, *Compensation*, at 19-24.

question as to whether the agency's determination was plainly inconsistent with other similar decisions within the agency or otherwise arbitrary or capricious.¹³

Even considering the validity to the grievant's argument acknowledged by the agency, the evidence does not suggest a sufficient question as to whether the agency misapplied policy such that qualification for hearing is warranted. The crux of the issue is the fact that the grievant ultimately declined the job offer. While the grievant first introduced the issue of her resume and RYE following the agency's initial offer, the grievant did not raise the specific arguments of the missing clerical roles until after she rejected the offer. As the agency alluded to, the proper time for her to raise such an issue would have been during salary negotiations. Further, employees and applicants are able to negotiate starting pay, but that does not mean that agencies have to agree to an adjustment of the offer on the table. Thus, to the extent the grievant sought to negotiate, she was essentially told by the agency that the salary offer adjusted by \$2,527 was the final offer. The grievant nevertheless chose to decline the salary offer. We can infer no misapplication or unfair application of policy as to these facts, absent evidence of a current improper compensation level, which EDR has not reviewed.

Given the fact that the grievant declined the offer, there is essentially no effective relief that could be granted by a hearing officer. While it is the case here that a hearing officer cannot grant relief in the form of reviving the position offer with acceptable starting pay (if warranted), the grievant does limit her requested relief to the agency revising her RYE and adjusting her pay accordingly. However, there is insufficient evidence in the record to suggest that the agency misapplied policy by not further revising her RYE and adjusting her current pay in light of the mentioned clerical roles, or that there still remains a discrepancy in the grievant's RYE so significant that an in-band adjustment of some kind is necessary – at least to the extent that the agency has violated state or agency policy. The grievant provides an indication of the omission of certain clerical roles from her RYE documentation, but this, by itself, does not so clearly show that a pay adjustment is required.

Additionally, as the agency also alluded to, RYE is but one of many factors considered in determining starting pay, and a grievant's RYE by itself does not guarantee a certain starting pay. The grievant argues that RYE is the "first step" in determining starting pay for a job offer, but there is ultimately no state policy (or agency policy of which EDR is aware) that dictates RYE be used as such a primary determining factor in calculating starting pay. Further, there is little to no evidence in the record to suggest how adding the three mentioned clerical roles, each valued at 50% RYE, would amount to a 10% pay increase. While the grievant's frustrations regarding this apparent discrepancy in her RYE are understandable, the agency has nonetheless not taken any adverse action or omission regarding the grievant's current salary that suggests a sufficient question of a misapplication of policy. However, the agency is encouraged to ensure that the grievant's RYE is accurate, and if it is found to be inaccurate, correct any discrepancies in the grievant's salary. If the grievant continues to assert that her pay is inaccurate, she is free to file an additional grievance contesting her salary in general.¹⁴

¹³ 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 No. 2008-1879 (and authorities cited therein).

¹⁴ See *Grievance Procedure Manual* § 2.4.

There appears to be no dispute in this case that the grievant is a competent and valued employee. Having reviewed the information in the grievance record, however, EDR finds insufficient evidence to demonstrate that the agency's failure to properly calculate the grievant's RYE pursuant to a position offer, if accurate, violated a specific mandatory policy provision or was outside the scope of the discretion granted to the agency by the applicable compensation policies. Although the grievant may reasonably disagree with the starting pay considered with her position offer, EDR can find nothing to indicate that the grievant is so clearly entitled to a pay increase based on the available information that a misapplication of policy may have occurred. Much deference is granted to agencies when considering salary increases and the enumerated Pay Factors. In cases like this one, where a mandatory entitlement to a pay increase does not exist, agencies have great discretion to weigh the relevant factors. For these reasons, EDR cannot find that the agency's assessment of the grievant's salary overall in this case was improper or otherwise arbitrary or capricious. Accordingly, the grievance does not raise a sufficient question as to whether the agency misapplied and/or unfairly applied policy and does not qualify for a hearing on this basis.

EDR's qualification rulings are final and nonappealable.¹⁵

Christopher M. Grab
Director
Office of Employment Dispute Resolution

¹⁵ Va. Code § 2.2-1202.1(5).