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## QUALIFICATION RULING

In the matter of the Department for Aging and Rehabilitative Services  
Ruling Number 2025-5856  
May 16, 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 grievance dated December 15, 2024 with the Department for Aging and Rehabilitative Services (the “agency”) qualifies for a hearing. For the reasons discussed below, the grievance is not qualified for a hearing.

### FACTS

The grievant worked until recently as an information technology specialist for the agency. It appears that, in mid-December 2024, agency management determined that the grievant’s position was not supported by work volume or operational need. Therefore, the agency separated the grievant from employment as a layoff.

On or about December 15, 2024, the grievant initiated a grievance to challenge the layoff, alleging that the layoff decision was a misapplication of DHRM policy, was arbitrary and capricious, and was motivated by discrimination and/or retaliation. The grievant alleged that, during 2023 and 2024, she raised issues and/or complaints about various issues, such as her workload and the air quality at her work facility. In particular, she informed her management that she experienced “severe headaches” on days she worked in the office, and she suspected they were caused by other employees’ use of air fresheners in the facility. Through discussions with her supervisor, she believed she had submitted necessary documentation to support approval for remote work. According to the grievant, she took a medical leave of absence from August 13 to November 1, 2024. The grievant recounted a confusing conversation with her supervisor about additional documentation needed for remote-work approval upon her return to work, in which her supervisor became “loud” and “ang[ry].” She also alleged that, in December 2024, her supervisor attempted to assign her new responsibilities that would require a change in work hours, and showed disapproval when the grievant questioned the new assignment. The grievant alleged that, as a result of her raising concerns during this period, her supervisor and manager “conspired to eliminate [her] critical position” as a misapplication of DHRM Policy 1.30, *Layoff*.

In response, the grievant’s manager maintained that the decision to eliminate the grievant’s position arose from an assessment that began during Spring 2024. According to the manager, the assessment showed that the grievant’s position dealt with “an average of 2 helpdesk tickets per business workday . . . , which is not enough volume to justify a dedicated position.” The manager further asserted that this work volume could be absorbed by other employees and by the agency’s technology vendor under an existing contract. The agency head declined to grant relief or to qualify the grievance for a hearing, and the grievant now appeals the latter 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.<sup>1</sup> The grievance procedure generally limits grievances that qualify for a hearing to those that involve “adverse employment actions.”<sup>2</sup> 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.”<sup>3</sup> For purposes of this ruling, we presume that the grievant has experienced an adverse employment action because she was separated from employment.

Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.<sup>4</sup> Thus, claims relating to issues such as the hiring, promotion, transfer, assignment, and retention of employees within the agency and layoff “shall not proceed to a hearing” unless there is sufficient evidence of discrimination, retaliation, unwarranted discipline, or a misapplication or unfair application of policy.<sup>5</sup> 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.

As it relates to prohibited discrimination (*i.e.* discrimination on the basis of a protected class<sup>6</sup>) or retaliation, a grievance may qualify for a hearing if it raises a sufficient question whether the agency’s nondiscriminatory business justification for the acts or omissions grieved was a pretext for an improper motive.<sup>7</sup> As to retaliation in particular, a grievant must show that, but for

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

<sup>2</sup> See *id.* § 4.1(b); see Va. Code § 2.2-3004(A).

<sup>3</sup> 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”).

<sup>4</sup> Va. Code § 2.2-3004(B).

<sup>5</sup> *Id.* § 2.2-3004(C); see *Grievance Procedure Manual* §§ 4.1(b), (c).

<sup>6</sup> See DHRM Policy 2.05, *Equal Employment Opportunity*, at 1.

<sup>7</sup> See *Strothers v. City of Laurel*, 895 F.3d 317, 327-28 (4th Cir. 2018); *Netter v. Barnes*, 908 F.3d 932, 938 (4th Cir. 2018) (citing *Univ. of Tex. S.W. Med. Ctr. v. Nassar*, 570 U.S. 338, 360 (2013)); *Villa v. CavaMezze Grill, LLC*, 858 F.3d 896, 900-901 (4th Cir. 2017); see, e.g., *Felt v. MEI Techs., Inc.*, 584 Fed. App’x 139, 140 (4th Cir. 2014).

the retaliatory motive, the adverse action would not have occurred.<sup>8</sup> Here, the grievant claims that the agency’s decision to eliminate her position was a pretext for improper motives: “race, age, gender, and retaliation.”

Under DHRM Policy 1.30, *Layoff*, agencies implementing layoffs “should assess and document the business need to reduce the number of employees or to reconfigure the work prior to implementing a Layoff. Each agency is responsible for identifying employees for layoff consistent with their business needs” and Policy 1.30.<sup>9</sup> Moreover, “[a]fter identifying the work that is no longer needed or that must be reassigned, agencies must identify employees for layoff within the same work unit, geographic area, and Role, who are performing substantially the same work” and proceed with layoffs according to affected employees’ work status and seniority.<sup>10</sup> Employees should be considered to be performing “substantially the same work” according to the following factors:

- The positions have similar job duties; knowledge, skills, and abilities; and other job requirements;
- The positions are in the same work unit;
- The positions have the same Role, work title, and/or standard classification code; and
- The positions are at the same reporting level in the organizational structure.<sup>11</sup>

Prior to her layoff, it appears the grievant’s work unit included three members classified in the Role of Information Technology Specialist I. The grievant’s work title was IT Help Desk Specialist. The other two members’ work titles were, respectively, IT Operations Specialist and “No Wrong Door” [NWD] Expansion Specialist.<sup>12</sup> According to the agency, in or around April 2024, management undertook a review of this work unit to determine what duties and responsibilities were still needed and how these might be redistributed. The conclusion of this review was that the helpdesk duties that were the focus of the grievant’s position could be absorbed by the other unit members, her supervisor, and an agency contractor.

In assessing which employees would be impacted by a layoff in the grievant’s unit, the agency determined that only the grievant would be impacted because other employees were not “performing substantially the same work” under Policy 1.30. According to the agency, the IT Operations Specialist “requires development of user training” and “needs to be able to design electronic [business intelligence] analytics-driven reports available to end users and to be able to guide them what report they may need.” The position requires data analysis skills and database design knowledge. Separately, the NWD Expansion Specialist “supports the development and implementation of new technology and tools and conducts research and analysis for monitoring and providing assistance with the development of new trainings.” The position is focused on

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<sup>8</sup> *Netter*, 908 F.3d at 938.

<sup>9</sup> DHRM Policy 1.30, *Layoff*, at 2.

<sup>10</sup> *Id.* at 3.

<sup>11</sup> *Id.*

<sup>12</sup> According to the agency, No Wrong Door “is a network and system providing streamlined access to information, services, and supports for older adults and individuals with disabilities – maximizing opportunities to live at home and engage in community life.”

marketing and presentations related to NWD systems. By contrast, the agency asserts that the Help Desk Specialist “does not design, develop, research, or conduct end-user training,” and the entire position was devoted to “provid[ing] support to end users” upon receiving inquiries. Thus, agency management determined that the grievant did not have the knowledge, skills, and abilities to perform the tasks of the IT Operations Specialist (focused on data analytics and database design/administration) or the NWD Expansion Specialist (focused on analyzing, promoting, coordinating, and training for the NWD system). Because the other members of the grievant’s work unit were deemed not to be performing “substantially the same work” as the grievant, she was the only employee affected by the layoff, and therefore seniority was not a factor in determining who would be laid off.

The grievant challenges the agency’s determinations and motive. She contends that her position historically has not been a “metrics” or volume-driven position and, therefore, it is “unfair” for the agency to now shift its focus. To the extent management desired to prioritize work volume, she alleges that the IT Operations Specialist had “no workload for over a year,” and the NWD Expansion Specialist also had “low metrics.” However, the grievant’s description of her peers’ responsibilities and duties is not consistent with their respective Employee Work Profiles or management’s stated expectations for those positions.

As distinct from the IT Help Desk Specialist position, the documented purposes of the IT Operations Specialist position include:

- Assist with initial implementation and ongoing technical support for a new vendor-supplied data-reporting application;
- Provide end-user training for the application (including the ability to create and provide live, recorded, and written content across multiple media formats); and
- Provide application support in accordance with typical on-demand daily operations.

Required and preferred qualifications for the position include database design knowledge; data analysis skills; experience with technical writing, development of end-user training materials and training sessions (live and remote), and Structured Query Language (SQL); and a bachelor’s degree or equivalent in computer science or related field.

Also as distinct from the IT Help Desk Specialist position, the documented purposes of the NWD Expansion Specialist position include:

- Support the development and implementation of new technology and tools among the provider network that enhances NWD System expansion across Virginia; and
- Enhance NWD by engaging collaboration of public and private stakeholders, conducting research and analysis for monitoring and providing assistance with the development of new trainings.

Required and preferred qualification include a working knowledge of state and federal long-term care programs, Virginia’s aging and disabilities networks, local government, and social determinants of health; experience in various technology applications for training and

demonstrations for non-IT staff; data processing/reporting as a means of performance measures; developing marketing and outreach strategies and materials; and the ability to develop solutions and make recommendations for appropriate actions, apply technology solutions to scalability of the statewide initiative and overall expansion activities, and manage statewide workgroup for integrating home and community-based services with statewide network of partners and among local lead agencies.

By contrast, the purposes of the grievant's position is/was to:

- Provide vendor software end-users assistance;
- Track and manage inquiries, issues and resolutions to incoming Help Desk contacts;
- Create and maintain supporting documentation for end-users including user guides and manuals; and
- Provide support in the software change management process including software testing.

Required and preferred qualifications included the ability to write use cases and test plans, execute software testing, write end-user guides and manuals, and emphasize customer service; and knowledge of Microsoft Windows applications, internet browsers, and web-based applications.

The agency concluded that, although the three Information Technology Specialist Is in the grievant's work unit had the same Role and reporting level, their work titles, work duties, and required knowledge, skills, and abilities were not similar for purposes of layoff. Upon a thorough review of the information provided by the parties, EDR cannot conclude that the grievant has presented a sufficient question as to whether the agency's conclusion in this regard was a pretext for an improper motive or was otherwise a misapplication of the layoff policy. Although the grievant may disagree with management's allocation of responsibilities within her work unit, we find no basis to question the agency's stated interest in maintaining its IT Operations and NWD Expansion Specialist positions, or its judgment that the grievant was not qualified for those positions.

Apart from the issue of whether the grievant's responsibilities were distinct from her peers, the grievant also appears to question the agency's fundamental motivation in reviewing her unit and deeming her position unnecessary. The grievant maintains that her performance evaluations have been excellent, and she was not aware of any doubts around the value of her role until she learned of the layoff decision. She suggests that the layoff decision was motivated not by operational needs but rather by retaliation for past complaints she had raised regarding a number of issues. For example, the grievant filed a previous grievance in 2023 regarding workplace health and safety practices, and she raised concerns to her supervisor during 2024 regarding additional workplace health and safety issues and also new assignments her supervisor proposed to give to her that were potentially outside her normal work hours. The grievant claims that her supervisor at times adopted a loud and/or frustrated tone in response to these concerns. The grievant notes that she, an African American woman over the age of 40, was laid off while her younger, white peers were not. As other evidence of improper motive, she points to the fact that she received a replacement work laptop shortly before her layoff and also that her managers converted her annual performance review meeting into a layoff meeting, which the grievant viewed as "malicious."

EDR cannot find that these factors are evidence of pretext such that a hearing is warranted. DHRM Policy 2.35 and its associated guidance make clear that agencies must not tolerate workplace conduct that is disrespectful, demeaning, disparaging, denigrating, humiliating, dishonest, insensitive, rude, unprofessional, or unwelcome. However, these terms must be read together with agencies' broader authority to manage the means, methods, and personnel by which agency work is performed.<sup>13</sup> Based on these principles, we are unable to identify instances of conduct by management that could potentially constitute prohibited conduct suggestive of animus or another improper motive for the grievant's layoff.

It appears that the grievant is essentially claiming that her layoff was driven by a personally-motivated desire to remove her from employment without a business justification. We have considered the grievant's arguments on that issue above in relation to the requirements of DHRM Policy 1.30 and found no basis to conclude that the agency lacked a business-related reason for abolishing her position or that the stated justifications were pretext for an improper reason. According to the grievant's management, efforts were made since 2018 to enhance her position with additional duties, with the more targeted review of her unit beginning no later than April 2024. In June 2024, the grievant began serious discussions with her supervisor regarding headaches the grievant would get when she worked onsite. Based on the information provided to EDR, the grievant was later approved for full-time telework, or at least that was the grievant's belief. Even accepting the grievant's account that her supervisor may have appeared frustrated during certain conversations, we cannot find that such incidents reasonably call into question the non-retaliatory justifications provided by the agency. Although the record indicates the grievant at times had disagreements with her managers and experienced her separation as adverse, we are unable to identify evidence that could reasonably suggest animus or an improper motive on the part of agency managers, such that the agency's proffered explanation for the layoff appears to have been pretextual.

The grievant further asserts that her layoff was discriminatory. Grievances that may be qualified for a hearing include actions that occurred due to discrimination on the grounds of race, sex, color, national origin, religion, sexual orientation, gender identity or expression, age, veteran status, political affiliation, disability, genetic information, or pregnancy, childbirth, or related medical conditions.<sup>14</sup> Here, the grievant asserts that she is an African American woman over the age of 40. EDR nevertheless finds no reason to conclude that the layoff process was conducted improperly here, as discussed more fully above. For a claim of discrimination to qualify for a hearing, there must be more than a mere allegation that discrimination has occurred. Rather, there must be facts that raise a sufficient question as to whether the actions described within the grievance were the result of prohibited discrimination based on a protected status. If, however, the agency provides a legitimate, nondiscriminatory business reason for its action, the grievance will

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<sup>13</sup> See Va. Code § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c) (stating that claims relating to issues such as the methods, means, and personnel by which work activities are to be carried out generally do not qualify for a hearing unless there is 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>14</sup> See DHRM Policy 2.05, *Equal Employment Opportunity*.

not be qualified for a hearing, absent sufficient evidence that the agency's professed business reason was a pretext for discrimination.<sup>15</sup> There are no such facts here.

### CONCLUSION

For the reasons expressed above, the facts presented by the grievant do not constitute a claim that qualifies for a hearing under the grievance procedure at this time.<sup>16</sup> EDR's qualification rulings are final and nonappealable.<sup>17</sup>

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<sup>15</sup> See, e.g., *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007) (citation omitted).

<sup>16</sup> See *Grievance Procedure Manual* § 4.1. To the extent this ruling does not address any specific issue raised in the grievance, EDR has thoroughly reviewed the grievance record and determined that the grievance does not raise a sufficient question as to whether discrimination, retaliation, or discipline may have improperly influenced any management decision cited in the grievance, or whether the agency may have misapplied and/or unfairly applied state policy that would warrant qualification for a hearing.

<sup>17</sup> See Va. Code § 2.2-1202.1(5).