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QUALIFICATION RULING

In the matter of the Department of Corrections
Ruling Number 2025-5873
May 20, 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 a March 24, 2025 grievance with the Department of Corrections (the “agency”) qualifies for a hearing. For the reasons discussed below, this grievance is not qualified for a hearing.

FACTS

In or around December 2024, the grievant was informed about an overpayment salary error for three pay periods in October and November 2024 during a time that the grievant was on short-term disability leave under the Virginia Sickness and Disability Program (VSDP). It appears that the overpayment was partially due to delays in communication between the VSDP third-party administrator and the agency, causing the Cardinal system not to be updated to reflect the grievant’s time on VSDP leave until after it had begun. This resulted in an overpayment to the grievant by receiving a full paycheck, while under VSDP there was only an entitlement to 60% of pay. The grievant challenged the timeframe within which the agency sought to recoup the overpayment in payroll deductions. After consideration, the agency ultimately offered the grievant a repayment plan of payroll deductions across six pay periods, which also appears to be below the 25% of disposable earnings threshold.¹ Nevertheless, the grievant initiated this grievance on or about March 24, 2025, arguing that there should be no liability for repayment under the provisions of Virginia Code Section 2.2-804. The grievant seeks to be repaid amounts that were collected through payroll deductions. The grievance has proceeded through the resolution steps without the grievant being provided the relief sought. The agency head ultimately determined that the grievance does not qualify 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.² Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the

¹ See Va. Code § 2.2-804(E).

² See *Grievance Procedure Manual* §§ 4.1 (a), (b).

affairs and operations of state government.³ 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.⁴ 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.⁵

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions."⁶ Thus, typically, a threshold question is whether the grievant has suffered an adverse employment action. 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 of this ruling only, EDR will assume that the grievant has alleged an adverse employment action because the grievance asserts issues with reduced compensation (if improperly reduced).

The Virginia Department of Accounts provides agencies with accounting guidance that they are required to follow, which includes guidance on overpayments.⁸ Agencies are obligated to collect overpayments that resulted from errors.⁹ 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. As such, we find nothing to suggest that the agency's actions with respect to the overpayment and attempts to seek reimbursement of such overpayment violated any policy mandate or disregarded any applicable policy's intent.

The grievant argues, in effect, that the agency misapplied or unfairly applied state policy and/or law by seeking to recover overpayments about which the grievant had no knowledge, citing the following provision of Virginia Code Section 2.2-804(A):

Any officer or employee of the Commonwealth who obtains any compensation or payment to which the officer or employee is not entitled shall be liable for repayment to the employer. Such recipient officer or employee shall not be liable for repayment if the recipient officer or employee proves by a preponderance of the evidence that the improper payment occurred through no fault

³ See Va. Code § 2.2-3004(B).

⁴ *Id.* § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).

⁵ See, e.g., EDR Ruling No. 2022-5309.

⁶ See *Grievance Procedure Manual* § 4.1(b).

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").

⁸ See *Commonwealth Accounting Policies and Procedures Manual*, Topic 50510, "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 6.

⁹ *Id.*

of the recipient officer or employee and such officer or employee had no actual knowledge of the error and could not have reasonably detected the error.¹⁰

While we presume that the overpayment to the grievant was through no fault of their own, EDR cannot find that the grievant has proved by a preponderance of the evidence that the error could not have been reasonably detected. We do not find it unreasonable for employees to know or be presumed to know the basic parameters of their compensation, including what benefits they would be due in a claim under VSDP. Here, the grievant should have been aware that the applicable policy only provided disability benefits at 60% of normal compensation given the grievant's years of service,¹¹ but yet appears to have been paid a full normal paycheck during the three pay periods in question. Such a difference should have been apparent in this situation. Thus, under these facts, we cannot find that this Code provision renders the grievant not liable for the overpayment for which there is no dispute that the payment was in error.

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.

EDR's qualification rulings are final and nonappealable.¹²

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¹⁰ Va. Code § 2.2-804(A).

¹¹ DHRM Policy 4.57, *Virginia Sickness and Disability Program*, at 14-15. No facts have been presented to suggest that this is an unreasonable assumption based on any particular circumstances in this case or with this grievant individually.

¹² See Va. Code § 2.2-1202.1(5).