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**QUALIFICATION RULING**

In the matter of the Department of Juvenile Justice  
Ruling Number 2025-5798  
January 3, 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 his October 10, 2024 grievance with the Department of Juvenile Justice (the “agency”) qualifies for a hearing. For the reasons discussed below, this grievance is not qualified for a hearing.

**FACTS**

On August 12, 2024, the grievant was placed on pre-disciplinary (paid) leave due to allegations of engaging in misconduct and continued to be out of work during the circumstances giving rise to this grievance. On September 28, 2024, the grievant was charged with Driving While Intoxicated. After being notified of the charge against the grievant, the agency placed the grievant on unpaid suspension due to the criminal charge. On October 10, 2024, the grievant initiated a grievance to challenge the unpaid suspension. The grievance proceeded through the single management step and the agency head elected not to qualify the grievance for a hearing. The grievant now appeals that determination to EDR.

The grievant applied his personal leave to cover the unpaid suspension so that he continued to be paid. The grievant was ultimately found not guilty of the criminal charges on December 2, 2024. Accordingly, the agency has restored the leave the grievant used during the unpaid suspension and now reflects that time as a continuation of the original period of pre-disciplinary leave. Because the grievant was subsequently terminated from employment on December 20, 2024,<sup>1</sup> the grievant will be receiving a leave payout in the coming weeks, according to the agency.

**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>2</sup> The grievance procedure generally limits grievances that qualify for a hearing to those that involve “adverse

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<sup>1</sup> The grievant’s termination is the subject of a separate dismissal grievance that will proceed to a hearing.

<sup>2</sup> See *Grievance Procedure Manual* § 4.1.

employment actions.”<sup>3</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>4</sup>

Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.<sup>5</sup> 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 or agency policy may have been misapplied or unfairly applied.<sup>6</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.<sup>7</sup>

However, 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.<sup>8</sup>

Under the version of DHRM Policy 1.60, *Standards of Conduct* in effect at the time of the events of this grievance, agencies were permitted to suspend employees without pay for up to 90 days for alleged criminal conduct.<sup>9</sup> The policy allowed agencies to suspend an employee “who is formally charged with a criminal offense that impacts their ability to do their job or represents a risk to the agency and to the agency’s mission.”<sup>10</sup> According to the agency, based on the grievant’s position as a security manager working with youth in the facility, he was not eligible to return to work until the criminal court matter was resolved. Because we need not reach this question for the reasons described below, EDR will not address in this ruling whether the agency has articulated a proper basis under policy that the grievant’s charge of Driving While Intoxicated impacted his ability to do his job or represented a risk to the agency. Indeed, the circumstances of this situation

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<sup>3</sup> See *id.* § 4.1(b); see Va. Code § 2.2-3004(A).

<sup>4</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>5</sup> Va. Code § 2.2-3004(B).

<sup>6</sup> *Id.* § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).

<sup>7</sup> See, e.g., EDR Ruling No. 2020-4956.

<sup>8</sup> See, e.g., EDR Ruling No. 2021-5261; EDR Ruling No. 2017-4477.

<sup>9</sup> DHRM Policy 1.60, *Standards of Conduct*, at 12-13 (exp. Dec. 31, 2024).

<sup>10</sup> *Id.* at 12.

were additionally unusual given that the grievant had already been removed from the workplace on pre-disciplinary paid leave for unrelated misconduct.

Although the grievant was placed on an unpaid suspension, he never lost any pay, according to the agency. The grievant was required to access his personal leave to maintain his pay during this period, but that leave is now in the process of being restored and paid out to the grievant. As such, even if EDR were to find that there is a basis to qualify this grievance for a hearing, there is no effective relief available to be granted by a hearing officer. If the grievant had lost pay and/or leave that was not restored and it was determined that the grievant's suspension was improper, then a valid remedy may have existed. Here, where the grievant has essentially already been made whole for the period of his suspension due to being acquitted of the criminal charges and his leave being restored, there is no adverse employment action for which a hearing officer would have authority to award any relief. For this reason, the grievance does not qualify for a hearing.

This ruling determines only that the grievance does not meet the statutory requirements to qualify for an administrative hearing. 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).