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**QUALIFICATION RULING**

In the matter of the Department of Veteran Services  
Ruling Number 2025-5799  
January 21, 2025

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether his June 27, 2024 grievance with the Department of Veteran Services (the “agency”) qualifies for a hearing. For the reasons discussed below, the grievance does not qualify for a hearing.

FACTS

On or about June 27, 2024, the grievant initiated a grievance to challenge his “demotion” from Cemetery Caretaker Manager (“Manager”) to Cemetery Caretaker Team Lead (“Team Lead”). On June 3, 2024, the grievant received a letter reassigning him to the Team Lead position.<sup>1</sup> This letter stated that the grievant had “been unable to successfully perform the management responsibilities” of the Manager position, noting “issues with productivity, morale, cohesion, and the loss of confidence in [his] ability to effectively lead the team.” In his grievance, the grievant sought to return to the Manager position. The grievance proceeded through the management resolution steps without returning the grievant to the Manager position. The agency head has declined to qualify the grievance for a hearing and the grievant now appeals that determination to EDR.

DISCUSSION

By statute and under the grievance procedure, complaints relating solely to issues such as the hiring, promotion, transfer, assignment, and retention of employees within the agency “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>2</sup> The grievance does

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<sup>1</sup> This letter also indicated that the grievant’s salary would be reduced. That action was later removed and the grievant’s pay restored, including that portion the grievant would have received in connection with statewide salary increases.

<sup>2</sup> Va. Code § 2.2-3004(C); *see Grievance Procedure Manual* §§ 4.1(b), (c).

not assert any claims of discrimination or retaliation.<sup>3</sup> Thus, the only basis on which this grievance may qualify for hearing is under a theory of misapplication or unfair application of policy.

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve “adverse employment actions.”<sup>4</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>5</sup> Given that the grievant’s reassignment appears to have removed certain management responsibilities, EDR will assume that the grievance challenges an adverse employment action for purposes of this ruling.

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. A grievance that challenges an agency’s action such as a reassignment does not qualify for a hearing unless there is sufficient evidence that the resulting determination was plainly inconsistent with other similar decisions by the agency or that the assessment was otherwise arbitrary or capricious.<sup>6</sup>

DHRM Policy 3.05, *Compensation*, provides that:

From time-to-time agency business (staffing or operational) needs may require the movement of staff. Reassignment Within the Pay Band is the management-initiated action that is used for this purpose. Under Reassignment Within the Pay Band:

1. Employees may be moved (reassigned) to different positions within the same assigned Salary Range.
2. The position to which an employee is reassigned may be in the same or a different Role within the same Salary Range.
3. The employee’s base salary is not changed as a result of the reassignment.<sup>7</sup>

An agency’s attempt to address employee misconduct or performance appears to be consistent with a reading of “agency business needs.” Thus, agencies are given broad authority to reassign their employees within the pay band. Although characterized as a demotion by the grievant, both the Manager and Team Lead positions fall within the same pay band. Further, while agency management had initially sought to reduce the grievant’s salary as a result of the reassignment, that decision was properly rectified as there was not a basis to support such a reduction. Thus, based on a review of the totality of the situation, EDR has found no mandatory

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<sup>3</sup> Although the grievant appears to assert a claim for qualification based on “informal discipline,” EDR has not been presented with evidence in the grievance file showing that the agency’s stated purpose in reassigning him was untrue or otherwise arbitrary or capricious.

<sup>4</sup> See *Grievance Procedure Manual* § 4.1(b); see also Va. Code § 2.2-3004(A).

<sup>5</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>6</sup> See *Grievance Procedure Manual* § 9 (defining arbitrary or capricious as “[i]n disregard of the facts or without a reasoned basis.”).

<sup>7</sup> DHRM Policy 3.05, *Compensation*, at 14 (“Reassignment Within The Pay Band”).

policy provision that the agency has violated by reassigning the grievant in this instance. It is undisputed that the grievant's role title, salary, and pay band have remained the same following his reassignment. As such, because EDR cannot find that the agency has misapplied or unfairly applied policy, the grievance does not qualify for hearing.<sup>8</sup>

EDR's qualification rulings are final and nonappealable.<sup>9</sup>

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<sup>8</sup> This ruling only determines that under the grievance statutes this grievance does not qualify for a hearing. This ruling does not address whether the grievant may have some other legal or equitable remedy.

<sup>9</sup> Va. Code § 2.2-1202.1(5).