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QUALIFICATION RULING

In the matter of the Virginia Department of Health
Ruling Number 2025-5813
February 12, 2025

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether her August 26, 2024 grievance with the Virginia Department of Health (the “agency”) qualifies for a hearing. For the reasons discussed below, the grievance does not qualify for a hearing.

FACTS

The grievant worked as an executive secretary for the agency. She filed a grievance on or about August 26, 2024, claiming that, for the past two years and eight months since the filing of the grievance, she had been performing duties outside of those outlined in her Employee Work Profile (“EWP”). In particular, the grievant alleges that she had been given duties typical of a human resources (“HR”) role title and had been given access to confidential personnel information. She asserted that agency policy did not explicitly allow her to access confidential information, nor was there a need to because her department already had an HR analyst. Upon her return from short-term disability leave on August 12, 2024, she was apparently informed she would no longer have access to certain confidential personnel information. However, she still continued some non-confidential HR duties and retained access to recruitment information. As relief, she requested that she be compensated for the duties performed outside her job description for the relevant two years and eight months.

The agency affirmed through its step responses that the added job duties were considered administrative support duties that aligned with the grievant’s EWP, such as overseeing the “confidential flow of all communications and documents.” The second-step respondent added that the executive secretary position has “historically provided HR support activities,” and that the agency was not aware until April 2024 that the current executive secretary EWP did not include such duties within the scope of the position. The third-step respondent added that the grievant’s department relied on her assistance due to the lack of an HR assistant position. As to the HR duties the grievant mentioned were removed on August 12, the agency affirmed that they were removed due to the Office of Human Resources’ concern of their confidential nature, and not because they fell outside the scope of the grievant’s duties.

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Ultimately, the agency head declined to qualify the grievance for a hearing. While the second-step respondent granted relief in the form of compensation, the agency later overruled this determination, granting no relief. The grievant now appeals the qualification determination to EDR. In her appeal, the grievant noted that she has since resigned from 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.¹ Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.² 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.³ 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."⁴ 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."⁵ For purposes 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.

The grievant alleges that she was being given duties outside the scope of her EWP and was not being properly compensated for those duties. Specifically, she has noted that the duties at issue relate to human resources and confidential information, akin to a human resource assistant position. She notes that the core duties of her executive secretary position do not include HR-related duties, nor do they provide for access to confidential information. She also asserts that her department already had an HR analyst and did not require her assistance in such tasks. Finally, she asserts that the agency removed her access to confidential information on August 12 as acknowledgement of the duties falling out of the scope of her EWP.

¹ See *Grievance Procedure Manual* §§ 4.1 (a), (b).

² See Va. Code § 2.2-3004(B).

³ *Id.* § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).

⁴ See *id.* § 4.1(b); see Va. Code § 2.2-3004(A).

⁵ 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").

There does not appear to be much dispute that the HR-related duties and access to confidential information were not explicitly outlined in the grievant's EWP. Indeed, upon review of the EWPs for the executive secretary and human resource assistant positions, the duties and access mentioned by the grievant are much more akin to the latter position and are not explicitly stated in the grievant's EWP. The agency notes that the HR-related tasks fall under the executive secretary's "Administrative Support" duty, but, to be fair to the grievant's assertions, this duty does not explicitly mention access to confidential/personnel information.

However, the agency maintains that the HR-related duties have historically been given to executive secretary positions. It also noted that, upon the Office of Human Resources' request due to confidentiality concerns, the grievant's access to confidential information was removed. While there is some dispute as to whether there was already an HR analyst in the department to handle the tasks instead of the grievant, the agency's decision to assign some HR-related duties to the grievant appears to be consistent with its discretion granted under policy and its business needs pursuant to the ever-changing needs of the agency, regardless of whether there was already an HR analyst in the grievant's department.

As to the grievant's claim for compensation for the duration of time when she had access to confidential information, EDR cannot find a sufficient basis for a misapplication of policy. Both the grievant's executive secretary position and the human resource assistant position are Pay Band 3 positions and share the same role title of Administrative and Office Specialist III. Therefore, even if the grievant's newer duties were considered more in line with the human resource assistant position, she still would have been in the same pay band with the same role title. Indeed, the DHRM Job Organization Structure describes that the "role provides career tracks for operational and administrative support specialists, such as ... human resource assistants ... [and] executive secretaries."⁶

The evidence before EDR suggests that while the grievant certainly spent significant time with tasks associated with a human resource assistant position in addition to her own, they are still tasks that are expected of an employee with the Administrative and Office Specialist III role title. There are also no allegations or evidence to suggest that such duties are misclassified in Pay Band 3. Likewise, under DHRM Policy 3.05, agencies may generally reassign employees to different duties without a mandated salary adjustment (otherwise known as a Reassignment within the Pay Band), and they may do so without advertising for the new role or otherwise carrying out the standard hiring process.⁷ While the grievant is understandably frustrated with her core duties being altered for several months, EDR cannot find based on the available evidence that the reworking of duties was not a valid exercise of the agency's discretion. For these reasons, EDR cannot find there to be a sufficient question raised to qualify the grievance for a hearing on the basis of any misapplication or unfair application of policy.

⁶ "Administrative and Office Support, #19010, Occupational Family: Administrative Services," <https://web1.dhrm.virginia.gov/itech/DHRMWebAssets/careergroups/admin/AdminOfficeSupport19010.htm>.

⁷ See, e.g., EDR Ruling No. 2024-5585; DHRM Policy 3.05, *Compensation*, at 14.

CONCLUSION

For the reasons discussed above, EDR finds that the facts presented by the grievant do not constitute a claim that qualifies for a hearing under the grievance procedure.⁸

EDR's qualification rulings are final and nonappealable.⁹

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⁸ See *Grievance Procedure Manual* § 4.1.

⁹ See Va. Code § 2.2-1202.1(5).