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QUALIFICATION RULING

In the matter of the Virginia Community College System
Ruling Number 2025-5822
February 28, 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 grievance dated December 20, 2024 with a community college in the Virginia Community College System (the "college" or "agency") qualifies for a hearing. For the reasons discussed below, the grievance does not qualify for a hearing.

FACTS

The grievant works as a sergeant for the college's police department. In 2023, the previous Chief of Police and current Vice President of Financial and Administrative Services ("VP") both agreed for the grievant to attend a three-part leadership training held in November 2024, January 2025, and March 2025. Each portion of the training was paid for in full with the approval of the college on or about April 1, 2024.

In October 2024, due to the expectation of her wife having a child in the coming months, the grievant began the process of applying for leave under the Family and Medical Leave Act (FMLA) and parental leave from January 2 through April 14, 2025. She also made Human Resources aware of her intent to use regular working hours on the weeks of her attending training in January and March and would be returning to FMLA/parental leave after each session. In short, she was requesting her allotted eight weeks of parental leave, plus four additional weeks of leave without pay under FMLA, with the two weeks of training where she would be paid regular working hours, coming to a total time span of 14 weeks. On October 23, the VP approved via email the grievant's request to use four weeks of unpaid FMLA leave "at the end of [her] 8 weeks paid parental leave."

On December 17, 2024, the grievant's child was born. The following day, the new Chief of Police messaged the grievant with questions about her intermittent leave request and upcoming training sessions. The new Chief later followed up on December 19, stating that the grievant's request for intermittent leave was denied due to his decision to retroactively deny the two

remaining training sessions. The grievant then reached out to the VP to question the decision, but the VP deferred to the new Chief's decision. The new Chief's reasoning included "operation needs," "equity in training," and "training not required." Specifically, the new Chief noted that the grievant already met the goal set for her leadership training after attending the first November session, and that staffing needs required her to work regular hours rather than attend an additional two weeks' worth of training. The grievant asserts that, in addition to the training being paid for in full, the college is now operating in Fiscal Year 2025, whereas the funds for the training were pulled from the Fiscal Year 2024 budget. She adds that she would still be out on leave during the weeks of the training if she could not attend them, putting into question, she asserts, the college's rationale of there being staffing issues. Finally, the grievant has provided screenshots of college employees' schedules during the weeks of training to support the notion that there are no significant staffing issues to prevent her from attending the training sessions.

The grievant filed an expedited grievance on or about December 20, 2024. As relief, the grievant requested that she be allowed to attend the remaining two training sessions in January and March that were fully paid for and previously approved by the VP and previous Chief. By extension, she also asked that she be allowed to use her parental leave intermittently to allow her to be paid regular working hours during the weeks of the remaining training sessions, asserting that the VP already approved her FMLA request.

Since the filing of her grievance, the grievant has asserted that delays in the expedited grievance process caused a tangible hardship on her ability to resolve the issues before the dates of the training. Specifically, she notes that, after receiving a written response from the single-step respondent, "[a]t no point was a zoom, phone, call or meeting established for fact finding or resolution between 01/03/25 and 01/08/25. This delayed the process of the expedited grievance process and the training is quickly approaching on January 27." She also notes that the single-step respondent did not properly fill out the applicable expedited grievance form. HR recognized that there was no formal meeting, but rather an email/text exchange, and scheduled the fact-finding meeting for January 16. The VP issued his revised single-step response the following day, reasserting his and the new Chief's position that the college is unable to let the grievant attend the training sessions due to operational needs, staffing shortages, and the sessions not being required. The grievant then proceeded to the qualification stage and the President denied qualification, adding that the college has since been granted a full refund for the paid training fees. 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.[1] Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.[2] 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

[1] *See Grievance Procedure Manual* § 4.1.
[2] Va. Code § 2.2-3004(B).

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 policy may have been misapplied or unfairly applied.[3] The grievant has not asserted a claim of discrimination or retaliation. Consequently, the grievance will be reviewed as to whether policy has been misapplied or unfairly applied.

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, in that the college's denial of the grievant's ability to use regular working hours during the weeks of the training directly affect the grievant's pay.

Leadership Training Denial

The primary issue at hand is the college's recent denial of the grievant's request to attend the remaining two sessions of leadership training in January and March. The grievant essentially argues that college management has misapplied or unfairly applied policy by originally approving and paying for all three training sessions, only for the new Chief of Police to retroactively deny the remaining sessions despite the fees already being paid in full. 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.

There is no dispute that the previous Chief of Police and current VP both approved the grievant's request to attend the three-part training in November, January, and March. There is also no apparent dispute that while the VP initially approved the training, he ultimately deferred and supported the decision by the new Chief to retroactively deny them. The college's rationale for denying the training is essentially due to the college having staffing problems that did not apparently exist at the time of the initial approval, the overriding operational need by the agency head to determine which expenses are necessary for the college, and the fact that the training sessions are asserted to be not required. Specifically, the college has noted that, for example, certain police officers have fluctuating schedules and are not always available and that multiple officers are already "maxed out on hours weekly." The college also elaborated on the training being non-mandatory, stating that there are already multiple areas of training deemed more crucial for the college's operations, and that the requested leadership training, though valuable, was not

[3] *Id.* § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).
[4] *See Grievance Procedure Manual* § 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").

one of those areas. The college added that the grievant has attended "significantly more [training hours] than the [] hours afforded to other officers." Finally, the college also provided several documents relating to the outlined goals and objectives of the college and the grievant, such as lists of training areas that did not include areas related to leadership.

While the grievant contends that the training had already been paid in full, the college has since confirmed that they were able to get a full refund. The grievant has also provided screenshots of staff schedules from both the time around the initial training approval and the current schedules to show that staffing concerns have not changed since the approval. Finally, the grievant also questions the logic of the college stating that they are denying the training for staffing concerns, despite the fact that the grievant would still be on FMLA leave during the weeks of the trainings if she did not attend them.

As to the questions of legitimate staffing shortage, it appears the college's rationale is that, if the grievant was approved for the training, that would ultimately be two additional weeks that the college is short a sergeant. While the grievant notes that she would still be using FMLA leave on the weeks of the trainings she would not be attending, due to the maximum 12 weeks of FMLA leave, she would then have to return to work two weeks earlier than the April 14 date mentioned on her intermittent leave request. In other words, while the grievant would not be working on the weeks of the training regardless of them being denied, she would be using her allotted FMLA leave rather than "regular" working hours, thereby exhausting her FMLA leave on March 27 rather than April 14. As to the overarching question of staffing shortages, the college has provided ample evidence of which employees are available on certain days, how the staffing issues have worsened since the initial approval in 2023-2024, and how the current staffing situation would be worsened if the grievant were to attend the January and March trainings.

While the grievant's frustration in this change is certainly understandable, we cannot conclude that management's decision to reverse what had been approved constitutes any misapplication or unfair application of policy. Each agency's management generally retains the exclusive right to manage the affairs and operations of state government and to develop and implement policies and procedures that serve their agency's operational needs. This right includes weighing the risks and benefits of taking time and resources to allow certain staff members to attend training. For these reasons, after a thorough review of the record, EDR cannot find a sufficient question of a misapplication of policy in regard to the college's decision to deny the previously approved leadership training sessions for the grievant.

Intermittent Leave Issues

As a supplemental issue, the grievant contests the college's decision to deny her intermittent leave request. It appears that the grievant's primary reason for requesting intermittent leave was so she could be able to be paid regular working hours during the two weeks of training in January and March. Due to the college's denial of the training, she would then use her FMLA leave during those two weeks, thus having to end her continuous 12 weeks of FMLA leave two weeks earlier than was originally planned.

The college has approved the grievant's request for eight weeks of paid parental leave and four weeks of unpaid FMLA leave to use in a continuous time period from January 1 through March 27, 2025. Because the college already denied the training sessions, and that was the sole basis for requesting intermittent leave, there would be no other reason to approve the intermittent leave request. For the foregoing reasons, EDR is unable to find any misapplication of policy with respect to the grievant's intermittent leave request denial.

Procedural Issues

As a final matter, the grievant has contended that delay in the expedited grievance process due to the college's misunderstanding of the grievance procedure has "cost [her] valuable time in the process that [she does] not have." Specifically, the delay was caused by the college improperly proceeding through the grievance process without holding a fact-finding meeting or having the single-step respondent properly fill out the expedited grievance form. Once the grievant made the college aware of this noncompliance, they promptly scheduled a meeting to be held, and after the meeting, the single-step respondent issued a revised response. Although the college was initially noncompliant by omitting the fact-finding meeting, the noncompliance was corrected. Accordingly, while we acknowledge the grievant's assertion, there is no further matter to address with regard to the noncompliance at this stage.

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.[6] EDR's qualification rulings are final and nonappealable.[7]

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Office of Employment Dispute Resolution

[6] *See Grievance Procedure Manual* § 4.1.
[7] *See* Va. Code § 2.2-1202.1(5).