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**QUALIFICATION RULING**

In the matter of the Department of Behavioral Health and Developmental Services  
Ruling Number 2025-5824  
March 28, 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 November 20, 2024 grievance with the Department of Behavioral Health and Developmental Services (the “agency”) qualifies for a hearing. For the reasons discussed below, this grievance is not qualified for a hearing.

**FACTS**

The grievant is an operations manager in the agency’s central office. On or about November 20, 2024, he filed a grievance claiming that, since around June 2023, he had been performing substantial duties in addition to the standard responsibilities of his position. Essentially, the grievant asserts that the agency eliminated a part-time mail clerk position and that, since then, the grievant has been required to complete those duties himself. The grievant has provided information to indicate that the additional mailroom duties require “approximately three hours a day.”<sup>1</sup> His grievance requests a “position review” and pay increase to account for the additional responsibilities.

In response, the agency’s chief of staff, as the second-step respondent, advised that the agency had paused all pay actions through April 2025 in conjunction with “a comprehensive process for reviewing an internal alignment review of all positions to address any discrepancies of pay.” However, he proposed that the grievant submit a detailed breakdown of his duties, including mail duties, to support a pay increase following the general pause on pay actions. Likewise, the agency head, responding at the third step, agreed that “compensation review should be deferred until the completion of the Agency’s ongoing classification and compensation review,” and at that time the grievant should “re-engage with [his] immediate supervisor . . . regarding [his] compensation review request” and provide supporting documentation. The agency head determined that the grievance did not qualify for a hearing, and the grievant now appeals that determination to EDR.

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<sup>1</sup> EDR has not been presented with information suggesting that these additional three hours has caused the grievant to stay at work three hours longer each day.

## 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 statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.<sup>3</sup> 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.<sup>4</sup>

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions."<sup>5</sup> Typically, then, 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>6</sup> For purposes of this ruling only, EDR will assume that the grievant has alleged an adverse employment action to the extent the grievant has sought and been denied a pay increase.

### *Assigned Duties and Compensation*

The grievant has sought a "pay increase to compensate [him] for the work [he has] done over and above [his] normal job duties." EDR interprets the grievant's request for qualification to assert that the agency's denial of his pay-increase request is inconsistent with DHRM Policy 3.05, *Compensation*. 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.

Under DHRM Policy 3.05, pay practices emphasize merit, rather than entitlements such as across-the-board increases, while providing management with great flexibility and a high degree of accountability for justifying their pay decisions.<sup>7</sup> Accordingly, the policy invests agency management with broad discretion to make individual pay decisions in light of 13 enumerated Pay Factors: (1) agency business need; (2) duties and responsibilities; (3) performance; (4) work experience and education; (5) knowledge, skills, abilities and competencies; (6) training, certification and licensure; (7) internal salary alignment; (8) market availability; (9) salary reference data; (10) total compensation; (11) budget implications; (12) long term impact; and (13)

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<sup>2</sup> See *Grievance Procedure Manual* §§ 4.1 (a), (b).

<sup>3</sup> See Va. Code § 2.2-3004(B).

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

<sup>5</sup> See *id.* § 4.1(b); see Va. Code § 2.2-3004(A).

<sup>6</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>7</sup> See DHRM Human Resource Management Manual, Ch. 8, *Pay Practices*.

current salary.<sup>8</sup> Because agencies are afforded great flexibility in making pay decisions, EDR has repeatedly held that qualification for a hearing is warranted only where the evidence raises a sufficient question as to whether the agency's determination was plainly inconsistent with other similar decisions within the agency or otherwise arbitrary or capricious.<sup>9</sup>

Here, the grievant alleges that the agency reduced staff in 2023, with the effect of adding approximately three hours' worth of additional duties to each of his workdays. He argues this is a significant increase in duties that, if permanent, should be associated with an increase in pay. Policy 3.05 provides various mechanisms by which the agency could offer additional compensation to reflect the grievant's position and duties. For example, Policy 3.05 recognizes that agencies may implement an in-band adjustment to an employee's base salary for reasons such as a change in duties, internal alignment considerations, or retention efforts.<sup>10</sup> In addition, agencies have broad discretion to offer temporary pay and bonuses reflective of employees' contributions to shorter-term operational imperatives.<sup>11</sup> However, nothing in the policy requires an agency to take such actions. As long as the agency has determined a grievant's salary with due consideration of all the Pay Factors, EDR cannot conclude that the grievant's salary is inconsistent with policy.

That said, we recognize that the grievant has sought a "position review," presumably on the understanding that such a review would be necessary for the agency to properly re-evaluate whether his salary remains appropriate in light of the Pay Factors. Although the agency appears to have provisionally declined the grievant's request, his managers have indicated that their denial is only due to a short-term, agency-wide freeze on all pay actions, due to end in April 2025. The agency's chief of staff and commissioner both characterized their decision as essentially a "deferral" and encouraged the grievant to renew his request once the pay freeze expires. We cannot say that provisionally declining to review the grievant's salary under these circumstances constitutes a misapplication or unfair application of policy. To the extent doubt remains regarding whether the grievant's salary comports with the Pay Factors, it would appear that the agency will soon be able and willing to review the grievant's position to resolve any such uncertainties and determine whether any additional pay actions are appropriate. To the extent the grievant pursues a position review and/or in-band adjustment at that time and disagrees with the resulting agency determinations, he would be able to address those issues via a new grievance. However, the present grievance does not present a question sufficient to qualify for a hearing in this regard.

### *Additional Issues*

During the pendency of the grievance, the grievant alleged that the agency's denial of his request for additional pay constituted "disparate treatment" on the basis of race, gender, and/or age. DHRM Policy 2.05, *Equal Employment Opportunity*, requires that "all aspects of human resource management be conducted without regard to race . . . ; sex; color; national origin; religion;

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<sup>8</sup> See DHRM Policy 3.05, *Compensation*, at 19-24.

<sup>9</sup> See *Grievance Procedure Manual* § 9 (defining arbitrary or capricious as a decision made "[i]n disregard of the facts or without a reasoned basis"); see also, e.g., EDR Ruling No. 2008-1879 (and authorities cited therein). In this context, disregarding relevant Pay Factors without a reasoned basis to do so could be considered arbitrary and capricious.

<sup>10</sup> DHRM Policy 3.05, *Compensation*, at 7.

<sup>11</sup> *Id.* at 5-6, 8.

sexual orientation; gender identity or expression; age; veteran status; political affiliation; disability; genetic information; and pregnancy, childbirth, or related medical conditions.”<sup>12</sup> For a claim of discrimination on any of these grounds to qualify for a hearing, the grievance must present facts that raise a sufficient question as to whether the issues describe an adverse employment action that has resulted from prohibited discrimination. However, if the agency provides a legitimate, nondiscriminatory business reason for the acts or omissions grieved, the grievance will not be qualified for hearing absent sufficient evidence that the agency’s proffered justification was a pretext for discrimination.<sup>13</sup>

Assuming for purposes of this ruling that the grievant’s discrimination allegation is within the scope of his grievance, the record includes legitimate, nondiscriminatory business justifications for not adjusting the grievant’s salary – that is, agency-level budget considerations and mitigations. Because nothing in the record suggests that the agency’s justification is a pretext for prohibited discrimination, the grievance does not qualify for a hearing on these grounds.

Finally, the grievant alleges that the management resolution step process revealed a potential discrepancy in his salary, where the agency may be paying him less than their recorded salary for him. According to payroll records, the grievant’s annual salary is \$69,217. Upon EDR’s review of the grievant’s most recent federal W-2 wage and tax statement (provided by the grievant), we are unable to confirm whether or not a discrepancy exists.<sup>14</sup> The agency has expressed a willingness to discuss this issue further with the grievant to address any actual or perceived error, and we encourage the grievant to pursue such discussions as appropriate.

### CONCLUSION

For the reasons expressed above, the facts presented by the grievance do not constitute a claim that qualifies for a hearing under the grievance procedure.<sup>15</sup> EDR’s qualification rulings are final and nonappealable.<sup>16</sup>

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<sup>12</sup> DHRM Policy 2.05, *Equal Employment Opportunity*, at 1.

<sup>13</sup> See *Strothers v. City of Laurel*, 895 F.3d 317, 327-28 (4th Cir. 2018); see, e.g., EDR Ruling No. 2020-4956.

<sup>14</sup> The W-2 form does not contain the gross salary figure provided by the agency, but it does appear to reflect one or more deduction amounts that could potentially resolve any apparent discrepancy.

<sup>15</sup> See *Grievance Procedure Manual* § 4.1.

<sup>16</sup> See Va. Code § 2.2-1202.1(5).