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QUALIFICATION RULING

In the matter of the Virginia Department of Health
Ruling Number 2025-5779
November 19, 2024

The grievant has requested a ruling from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) on whether her July 3, 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

In or around March 2024, the grievant applied for a Regional Human Resources (HR) Business Partner (Hampton Roads) position with the agency. The grievant was not selected for an interview for the position. This recruitment was a re-posted recruitment after the agency had been unsuccessful in filling the position in a prior effort. At the time of that prior opening, the grievant had also been an applicant for a similar Regional HR Business Partner position for a different region (Northern Virginia). While the grievant was interviewed in the recruitment for the Northern Virginia position in or around November 2023, she was not selected for the position. In the re-posted Hampton Roads position in March 2024, the agency had determined that the candidates who had applied during the prior opening did not need to reapply. An agency human resources manager mistakenly believed that the grievant was a candidate and had been interviewed for the position in the prior opening. Thus, when the grievant was initially screened in for an interview for the re-posted Hampton Roads opening in March 2024, the agency human resources manager mistakenly determined that the agency did not need to interview the grievant again.

On or about July 3, 2024, the grievant initiated a grievance challenging the agency’s failure to include her in the interview pool for the Regional HR Business Partner position (Hampton Roads) and other matters related to recruitment.¹ During the resolution steps, the agency addressed

¹ Some of the issues that the grievant raised initially in her grievance have been addressed by the agency during the steps such that they do not need to be further addressed in this ruling. The grievant also appears to challenge her non-selection for the Regional HR Business Partner (Northern Virginia) position from November/December 2023. While this challenge would be considered untimely, the agency did not assert such an argument in the step responses that EDR has reviewed. However, this challenge would not qualify for hearing based on the reasoning otherwise discussed in this ruling and due to the “relief” afforded the grievant that is directly related to the position, i.e., that the recruitment for the position was re-opened for the grievant to compete again. Lastly, the grievance appears to seek a review of other recruitment matters overseen by the agency HR manager who made the mistake in this case. While the grievant

the grievant's concerns and, perhaps in acknowledgement of the error made, attempted to offer relief for not being given an interview for the Regional HR Business Partner (Hampton Roads) position. The same position for the Northern Virginia region had become vacant again and the agency halted that recruitment process and re-opened the position for the grievant to apply, which it appears she has done. Importantly, it appears that if the grievant is interviewed in that recruitment, the panel will have different members from the prior recruitment in which she competed unsuccessfully. The grievance otherwise proceeded through the resolution steps with the agency head ultimately declining to qualify the grievance for hearing. 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.² Additionally, the grievance statutes and procedures reserve to management the exclusive right to manage the affairs and operations of state government.³ 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.⁴ Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions."⁵ 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."⁶ For purposes of this ruling only, EDR will assume that the grievant has alleged an adverse employment action in that she was denied a promotion for which she applied.

Finally, 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.⁷

The issue presented by this grievance is whether the agency's failure to interview the grievant for the position of Regional HR Business Partner (Hampton Roads) qualifies for a hearing.

was free to request this in her grievance, such matters are outside the purview of our review in this grievance and would not support qualification of this grievance for a hearing. Nevertheless, EDR would note that it appears that central office Human Resources staff have commendably initiated a review of certain recruitment matters.

² See *Grievance Procedure Manual* §§ 4.1 (a), (b).

³ See Va. Code § 2.2-3004(B).

⁴ *Id.* §§ 2.2-3004(A), (C); see *Grievance Procedure Manual* §§ 4.1(b), (c).

⁵ See *Grievance Procedure Manual* § 4.1(b); see Va. Code § 2.2-3004(A).

⁶ 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").

⁷ See, e.g., EDR Ruling No. 2017-4477; EDR Ruling No. 2017-4509.

In general, state hiring policy is designed to ascertain which candidate is best suited for the position, not just to determine who might be qualified to perform the duties of the position.⁸ Moreover, the grievance procedure accords much deference to management's exercise of judgment, including management's assessment of applicants during a selection process. That said, DHRM Policy 2.10, *Hiring*, provides that agencies may screen applications to reduce the initial applicant pool for a position. If so, screening must proceed according to "the minimum qualifications . . . established for the position" but may also include consideration of "additional considerations established for the position," provided the criteria are "applied consistently to all applicants."⁹ Once screening is concluded, Policy 2.10 provides that "[a] set of interview questions must be developed and asked of each applicant" who is interviewed, that those "[q]uestions should seek information related to the applicant's knowledge, skills, and ability to perform the job," and that "[i]nterviewers must document . . . applicants' responses to questions to assist with their evaluation of each candidate's qualifications."¹⁰

In this case, the parties do not appear to dispute that the agency misapplied or unfairly applied policy by excluding the grievant from its interview pool for the Regional HR Business Manager (Hampton Roads) position. Nevertheless, EDR typically does not qualify a grievance for a hearing if the hearing officer does not have the authority to grant effectual relief. Relief that is not available through the grievance procedure includes monetary damages and policy revisions.¹¹ In cases alleging misapplication of policy, "the hearing officer may order the agency to reapply the policy from the point at which it became tainted."¹² However, if a grievance such as this challenges a recruitment that has already concluded with the selection of another candidate, an opportunity to interview for that position will be moot and ineffectual in most cases. As such, in cases challenging a selection that has already occurred in this context, the relevant question for qualification purposes is whether sufficient evidence exists to demonstrate that the agency's misapplication of policy at the screening phase, rather than the availability of a more suitable candidate, caused the grievant's non-selection **as the finalist** for the position.

Although EDR's review suggests that the grievant could have been a strong candidate for the position, the candidate ultimately selected also appears to have had appropriately relevant experience. Agency decision-makers deserve appropriate deference in making determinations regarding a candidate's knowledge, skills, and abilities. As a result, EDR will not second-guess management's decisions regarding the administration of its procedures absent evidence that the agency's actions are plainly inconsistent with other similar decisions within the agency or otherwise arbitrary or capricious. Under the circumstances presented here, EDR can find nothing to indicate that the grievant was so clearly a better candidate that the agency's selection of another individual would not have been a reasonable exercise of discretion based on a good faith assessment of the candidates' suitability for the position. Although the grievant may disagree with this characterization of her relative experience, we cannot say that the grievance record supports a claim that would allow a hearing officer to find that the grievant should properly have been selected for the position, over the agency's chosen candidate.

⁸ See DHRM Policy No. 2.10, *Hiring*, at 23.

⁹ *Id.* at 9.

¹⁰ *Id.* at 12.

¹¹ *Grievance Procedure Manual* § 5.9(b).

¹² *Rules for Conducting Grievance Hearings* § VI(C)(1).

Accordingly, although it appears that the agency's screening process may have failed to apply consistent criteria to all applicants as state policy requires, we cannot say that the grievance presents a claim that would be susceptible to relief via a grievance hearing. This ruling determines only that the grievance does not qualify for a hearing; it should not be read to foreclose the possibility for dispute resolution outside the context of a grievance hearing. For example, we commend the agency for attempting to grant relief, while not perfectly acceptable from the grievant's perspective, in an attempt to provide the grievant with a similar opportunity to compete for another Regional HR Business Manager position. Although the hearing officer would not have authority to order a remedy under the circumstances if the grievance were qualified for a hearing, we encourage the parties to continue discussions regarding opportunities for the grievant to expand her expertise within the agency, as she sought to do by applying for the promotion at issue here.

EDR's qualification rulings are final and nonappealable.¹³

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¹³ Va. Code § 2.2-1202.1(5).