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QUALIFICATION RULING

In the matter of the Department of Juvenile Justice
Ruling Number 2025-5780
November 15, 2024

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 23, 2024 grievance with the Department of Juvenile Justice (the “agency”) qualifies for a hearing. For the reasons discussed below, the grievance does not qualify for a hearing.

FACTS

In July 2024, the grievant interviewed for the Assistant Director of Case Management position. The grievant was informed by voicemail message on July 23, 2024 that she was the finalist for the position. However, in August, the grievant was contacted to attend a second interview for the position. As the grievant thought she had already been selected for the position, a certain amount of confusion was created. Accordingly, the grievant submitted a grievance on or about August 23, 2024, to seek an investigation of these events and to be awarded the position for which she asserts she was selected. Around the same time,¹ the grievant was contacted by human resources to apologize for the miscommunication and to inform her that the Assistant Director of Case Management position has been withdrawn from the open hiring process. Agency human resources states that the agency decided not to proceed to fill the position at that time, the recruitment was cancelled, and the candidates were informed. Following the management resolution steps, the agency head determined that the grievance does not qualify for a hearing. 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.² Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve an “adverse

¹ The agency maintains that it was unaware of the grievance when the decision was made not to fill the position.

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

employment action.”³ For purposes of this ruling only, EDR will assume that the grievant has alleged an adverse employment action, in that it appears the position she applied for would have been a promotion.

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. Moreover, the grievance procedure accords much deference to management’s exercise of judgment, including a decision as to whether proceed to fill a position. Thus, a grievance that challenges an agency’s action like the process in this case 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.⁴

After a review of the record, EDR cannot find evidence of a sufficient question that the agency misapplied or unfairly applied policy regarding the ultimate determination of concluding the selection process at issue in this case. The grievant alleges that the agency mistakenly told her that she was given the position, pending a background check, before later contacting her about a second interview stage.⁵ While it appears that there have been communications with the grievant that led to confusion and a lack of trust concerning this position’s recruitment, EDR has not been presented with evidence of “unethical hiring practices” alleged by the grievant.⁶ Even if the facts are viewed in a light favorable to the grievant, a background check was pending and the agency had not given the grievant an offer letter. As the agency notes in its third-step response, the agency’s recruitment process is “multifaceted,” and the recruitment process ends “only when the offer of employment is extended and accepted by the candidate.” While EDR understands the grievant’s frustration in receiving a call telling her she was selected for the position pending a background check, the recruitment process was still open and the agency did not misapply or unfairly apply policy by later notifying the grievant of an additional interview stage.

Ultimately, the agency chose not to fill the position and cancelled the recruitment. The agency’s determination in this regard is a discretionary determination. While agencies are afforded great flexibility in making such decisions, agency discretion is not without limitation. 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 – evidence that has not been presented in this grievance. Rather, it appears that the agency determined what open positions to fill based on budgetary considerations. As such, EDR cannot find inconsistent, arbitrary, or capricious decision-making by the agency in this regard, and for that reason, EDR declines to qualify the grievance for a hearing on these grounds.

³ *Grievance Procedure Manual* § 4.1(b).

⁴ *See Grievance Procedure Manual* § 9 (defining arbitrary or capricious as “[i]n disregard of the facts or without a reasoned basis.”).

⁵ Conversely, in its management step responses, the agency contends that it never extended an offer of an employment to the grievant for the position.

⁶ A portion of the initial submission also appeared to suggest that agency human resources was engaging in such practices by withholding certain recruitment documentation from the grievant. At this stage in the proceedings, EDR is not aware of any further documentation the grievant argues that she did not eventually receive.

EDR's qualification rulings are final and nonappealable.⁷

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⁷ Va. Code § 2.2-1202.1(5).