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QUALIFICATION RULING

In the matter of the Department of Juvenile Justice
Ruling Number 2025-5901
August 11, 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 her May 8, 2025 grievance with the Department of Juvenile Justice (the "agency") qualifies for a hearing. For the reasons discussed below, the grievance is qualified for a hearing.

FACTS

The grievant used to work as a Probation Officer. In September 2024, the grievant accepted a position as a Residential Violence Intervention Specialist at an agency facility. According to the grievant, due to alleged staffing shortages, her duties were increased to mirror those of a Juvenile Correctional Specialist. The additional duties caused health problems for the grievant, who ultimately had to take a period of short-term disability leave in February 2025.[1] Following her leave, the grievant submitted a request for accommodations under the Americans with Disabilities Act (ADA). Specifically, the grievant requested that she be "[e]xcluded from participating in physical restraints, restricted from supervising residents alone, no lifting items above 10 pounds, [allowed to work] an 8am-5pm shift, and [given] 7 days to submit documentation."

The agency denied the accommodations, stating that the ADA "does not require that employers relieve disabled employees from performing any of the essential functions of their jobs." Instead, the agency offered "alternative accommodations" as a position reassignment to a Probation Officer I, which came with a pay decrease. The grievant accepted the position reassignment effective April 4, 2025, and her pay was frozen for 30 days before the decrease went into effect. After the 30-day freeze ended, the grievant filed this grievance to contest the denial of accommodations and the reassignment. As relief, the grievant requests to be reassigned "to a position comparable to that of a Program Admin Specialist II or maintain the ending salary of $84,507.00 from [her] previous position."

[1] The grievant also applied for and was approved for FMLA designation.

According to the agency, the grievant was no longer able to meet the expectations of her position as a Residential Violence Intervention Specialist. Upon the grievant's request for accommodations, the only accommodation deemed appropriate by the agency was to reassign her to the Probation Officer I role in another location. The agency has explained to EDR that there were "limited available and approved to fill positions," and the only possible position was the Probation Officer position. The grievant ultimately accepted the Probation Officer position and was made aware of the salary decrease. The grievant identified recent positions that she suggests she could have been reassigned to instead, such as the Reentry Advocate position for which she applied; however, the agency asserts that the grievant did not meet the minimum qualifications.

The grievant initiated her grievance to challenge her reassignment and it proceeded through the expedited process. Neither the single management-step respondent nor the agency head granted relief, and the agency head declined to qualify the grievance for a hearing. The grievant has appealed 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 procedure reserve to management the exclusive right to manage the affairs and operations of state government.[3] 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 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.[4] 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.

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]

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[2] *See Grievance Procedure Manual* § 4.1.
[3] Va. Code § 2.2-3004(B).
[4] *Id.* § 2.2-3004(A); *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").

Here, the grievance meets this threshold requirement for purposes of this ruling, as it alleges that the grievant was reassigned to a position with a pay decrease. Accordingly, the grievance may qualify for a hearing if the record raises a sufficient question whether the grievant's reassignment per ADA accommodation guidelines resulted from a misapplication or unfair application of policy.

Essential Functions

In this case, the parties do not appear to dispute that, at the time of her reassignment, the grievant was an employee with a disability. However, the record does suggest a dispute as to whether the grievant would be considered a qualified individual under the Americans with Disabilities Act (ADA). A qualified individual is one "who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires."[7] As a general rule, the ADA requires an employer to make reasonable accommodations to the known physical or mental limitations of a qualified employee with a disability, unless the employer "can demonstrate that the accommodation would impose an undue hardship on the operation of the business [or government]."[8] "Reasonable accommodations" include "[m]odifications or adjustments that enable [an employee] with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities."[9]

Generally, a job function may be "essential" when:

> the reason the position exists is to perform that function, when there aren't enough employees available to perform the function, or when the function is so specialized that someone is hired specifically because of his or her expertise in performing that function. If an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job. Other relevant evidence can include the employer's judgment as to which functions are essential, the amount of time spent on the job performing the function, the consequences of not requiring the incumbent to perform the function, and the work experience of people who hold the same or similar job.[10]

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[7] 42 U.S.C. § 12111(8).

[8] 42 U.S.C. § 12112(b)(5)(A); 29 C.F.R. § 1630.9(a) ("It is unlawful for a covered entity not to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of its business.").

[9] 29 C.F.R. § 1630.2(o)(1)(iii); *see* 42 U.S.C. § 12111(9)(B) (examples of modifications/adjustments that agencies could provide).

[10] Jacobs v. N.C. Admin. Office of the Courts, 780 F.3d 562, 579-80 (4th Cir. 2015) (internal quotations omitted) (citing 42 U.S.C. § 12111(8); 29 C.F.R. §§ 1630.2(n)(2), 1630.2(n)(3)) (finding that "providing customer service" was not necessarily one of a court clerk's essential job duties, even though it was listed in her job description); *see* 29 C.F.R. app'x § 1630.2(n) ("The inquiry into whether a particular function is essential . . . focuses on whether the employer actually requires employees in the position to perform the functions" that are considered essential.).

Here, the grievant worked as a Residential Violence Intervention Specialist for juvenile residents in the agency's care. According to this role's job description, her duties included assisting the Director of Violence Intervention in program development, reviewing policy and regulatory changes, providing accurate responses to technical questions, assisting staff in developing implementation plans of various needed programming, and providing needed training to staff regarding gangs and weapons programming, among other tasks. Regarding the use of physical restraints, the grievant's job description does not appear to put much attention to that aspect, though it does state that a Violence Intervention Specialist "[s]hould be able to assist in the performance of de-escalation with verbal or non-verbal commands, or physical intervention, when necessary." Similarly, the job description does not seem to expand on the requirement of having to supervise residents alone. The job description includes core responsibilities of "[s]upport[ing] residents with daily activities of the residents assigned to the unit community, including rehabilitation, recreation, education, work assignments, meals, personal hygiene, and general maintenance of living environment to ensure their safety and security." It adds that the grievant must "[i]mmediately intervene[] in behavioral crisis situations to ensure safety through the use of approved intervention/de-escalation strategies and techniques." Finally, in her recent evaluation, her supervisor noted that the grievant "worked to de-escalate residents."

The agency has provided that the grievant was a part of the Violence Intervention Unit where, due to the prison setting, she was expected to assist in physical interventions. They add that they could not promise that, in a violent or emergency situation, she would never have to take part in these kinds of interventions. The agency further contends that working with residents alone is an essential function because the grievant's Unit interacts with the residents on a daily basis. Finally, the agency adds that the grievant being tasked with serving as assistance to the Juvenile Correctional Specialists was an essential function of her job.

Conversely, the grievant has provided explanations as to why she believes she could carry out those functions with her requested accommodations. Regarding her request to be excluded from participating in physical restraints, the grievant cites to the Residential Violence Intervention Specialist job description, which says that she "should be able to assist in the performance of de-escalation with verbal or non-verbal commands, or physical intervention, when necessary." She argues that she "can assist by giving verbal commands, positioning [her]self between residents . . ., providing mechanical restraints [to other officers] . . ., [and] securing uninvolved residents," among other tasks. She further elaborates that other staff who are injured or have "no contact" restrictions have been given other duties to perform while maintaining their current positions.

As to her request not to supervise residents alone, she argues that the Residential Violence Intervention Specialist position does not require staffing a unit without a Juvenile Correctional Specialist being present. She further cites to the role's job description, which states that Violence Intervention Specialists must "support residents with daily activities of the residents assigned to the unit community . . .," arguing that this provision does not require having to singlehandedly staff a unit in the capacity of a Juvenile Correctional Specialist.

While the agency contends that exercising physical restraints, supervising units alone, and working one-on-one with residents are all essential functions, after a thorough review of the

grievant's job description, EDR finds disputed facts on these points such that the grievant has raised at least a sufficient question as to whether such tasks are essential functions of the Residential Violence Intervention Specialist position. At the same time, the definition of an essential function does allow some discretion on the part of the employer in determining whether they believe the function is essential, and for that reason, some weight should be given to the agency's determinations regarding this issue. Additionally, both parties have also suggested that, due to staffing shortages, there are not enough employees to carry out these functions. Given all of these factors at play, it is EDR's view that whether these functions are indeed essential is an unresolved question – one that could potentially be resolved by a hearing officer for purposes of this case.

Upon a review of the record and materials provided by the parties, EDR concludes the evidence presents a sufficient question as to whether the grievant was qualified to perform the essential functions of her Residential Violence Intervention Specialist position. It appears that, since at least March 2025, the grievant sought accommodations to perform her core functions, primarily in the form of limiting physical intervention. According to the grievant, the agency relayed to her that "the concern is that the longer [she] remain[s] at [the facility she] may be injured or hurt," and that the requested accommodations were not possible "due to the nature of the facility." While the agency has since provided EDR with an explanation as to why they feel physical intervention and being alone with residents are essential functions, we would not view this in combination with the ADA response letter as dispositive of the grievant's ability to perform the essential functions articulated in her job description. As the record is not clear on whether the grievant's requested accommodations would unduly burden the agency, the grievant can at least arguably be considered a qualified individual based on the available facts. As such, the grievant has raised at least a sufficient question as to whether her requested accommodations would allow her to stay at her Residential Violence Intervention Specialist position. Accordingly, the grievance is qualified for a hearing to address whether the grievant was properly accommodated pursuant to applicable law and policy.

Alternate Positions

As a potentially qualified individual with a disability, the grievant would have been entitled to reasonable accommodations that allowed her to perform the essential functions of her job. To determine the appropriate reasonable accommodation in those circumstances, it may be necessary for the employer "to initiate an informal, interactive process with the individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations."[11] To the extent that the employee has a continuing need for reasonable accommodation(s), this interactive process is an "ongoing" obligation to identify potential accommodations.[12] By engaging in this process, the employer may be in a position to determine whether more than one reasonable accommodation would allow the employee to perform their essential functions. An

[11] 29 C.F.R. § 1630.2(o)(3).
[12] Equal Empl. Opp. Comm'n, "Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the [Americans with Disabilities Act]," No. 32, Oct. 17, 2002, available at www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada; *see* 29 C.F.R. § 1630.9(a).

employer is not required to approve the exact accommodation requested by an employee if some other accommodation is available that will allow them to perform the essential functions of their position.[13]

It should be emphasized that the grievant's requested relief is to be reassigned "to a position comparable to that of a Program Admin Specialist II or maintain the ending salary of $84,507.00 from [her] previous position." While the agency attests that the only possible available position for the grievant was the Probation Officer I position that she accepted, the grievant has provided EDR with several potential positions that she has found to be within the same pay band and/or salary range as her prior position, in addition to the Reentry Advocate position for which she already applied. These include:

(1) Community Violence Intervention Specialist;
(2) Human Resource Investigator;
(3) Probation Supervisor;
(4) Employee Relations and Compliance Manager; and
(5) Violence Intervention Unit Manager (agency facility Violence Intervention Unit).

In the absence of other reasonable accommodations that would allow an employee to perform the essential functions of their position, the employee may be entitled to be reassigned to a vacant position for which they are qualified.[14] The ADA requires reassignment only after the employer determines that "(1) there are no effective accommodations that will enable the employee to perform the essential functions of [their] current position, or (2) all other reasonable accommodations would impose an undue hardship."[15] Because an employer is in the best position to know which of its positions are open or will become so, the employer may be "obligated to inform an employee about vacant positions for which s/he may be eligible as a reassignment" as part of the interactive process if no other accommodations are apparent.[16] EDR has no basis to conclude at this stage that the grievant is qualified to fill these roles. However, given the ongoing nature of the interactive process, EDR would recommend that the agency continue to consider whether available open positions would be possible options to meet the grievant's accommodations.

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[13] *See* 29 C.F.R. app'x § 1630.9 (stating that an employer should conduct an individualized assessment of the employee's limitations and the job, then "select and implement the accommodation that is most appropriate for both the employee and the employer"); *see also* Equal Empl. Opp. Comm'n, "Work at Home/Telework as a Reasonable Accommodation," No. 6, Feb. 3, 2003, available at https://www.eeoc.gov/facts/telework.html.

[14] 42 U.S.C. § 12111(9)(B); 29 C.F.R. § 1630.2(o)(2)(ii).

[15] EEOC, "Enforcement Guidance," *supra* n. 12; *see* Elledge v. Lowe's Home Ctrs., 979 F.3d 1004, 1014-16 (4th Cir. 2020) (noting that "reassignment's last-resort status [as a potential accommodation] encourages employers to take reasonable measures to accommodate their disabled employees in the positions they already hold").

[16] EEOC, "Enforcement Guidance," *supra* n. 12; *see, e.g.*, Cravens v. Blue Cross & Blue Shield, 214 F.3d 1011, 1019-22 (8th Cir. 2000) (denying summary judgment based in part on the employee's claim that they "asked for assistance in identifying alternative positions from other members of the human resources department and received minimal help in that regard").

CONCLUSION

For the reasons explained herein, this grievance is qualified in full. At the hearing, the grievant will have the burden to prove her claims as to not being given reasonable accommodations or reassigned to a position within the same pay band and/or salary range.[17] If she prevails, the hearing officer will have authority to order appropriate remedies, including reinstatement to her former position and restoration of applicable pay and benefits.[18]

Within **five workdays** of receipt of this ruling, the agency shall request the appointment of a hearing officer to hear the claims qualified for hearing, using the Grievance Form B. However, this ruling is not intended to prevent or discourage the parties from resolving the underlying issues outside the context of a hearing. Should the parties wish to pursue resolution of the issues herein prior to a hearing date, EDR is available to assist in such any efforts as desired and appropriate.

EDR's qualification rulings are final and nonappealable.[19]

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[17] *Grievance Procedure Manual* § 5.8; *Rules for Conducting Grievance Hearings* § VI(C).
[18] *Rules for Conducting Grievance Hearings* § VI(C)(1).
[19] *See* Va. Code § 2.2-1202.1(5).