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RECONSIDERED QUALIFICATION RULING

In the matter of the Department for Aging and Rehabilitative Services
Ruling Number 2025-5907
August 1, 2025

The grievant has requested that the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management reconsider its determination in EDR Ruling Number 2025-5856 (the "prior ruling"), which concluded that the grievant's December 15, 2024 grievance with the Department for Aging and Rehabilitative Services ("the agency") was not qualified for a hearing. EDR does not generally reconsider its qualification rulings and will not do so without sufficient cause. For example, EDR may reconsider a ruling containing a mistake of fact, law, or policy where the party seeking reconsideration has no opportunity for appeal. However, clear and convincing evidence of such a mistake is necessary for reconsideration to be appropriate.[1] For the reasons described below, EDR declines to reconsider the conclusions set forth in the prior ruling.[2]

DISCUSSION

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 hiring, promotion, transfer, assignment, and retention of employees within the agency and layoff "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] 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.

[1] *See*, *e.g.*, EDR Ruling Nos. 2010-2502, 2010-2553.
[2] The factual discussion that was included in the prior ruling is incorporated here by reference. Additional facts as argued by the grievant and additional information submitted by the agency will be included in the Discussion section below.
[3] Va. Code § 2.2-3004(B).
[4] *Id*. § 2.2-3004(C); *see Grievance Procedure Manual* §§ 4.1(b), (c).

Policy-based arguments

The grievant worked as an information technology specialist for the agency. In mid-December 2024, agency management determined that the grievant's position was not supported by work volume or operational need. As discussed in the prior ruling, according to the grievant's manager, an agency assessment showed that the grievant's position dealt with "an average of 2 helpdesk tickets per business workday . . ., which is not enough volume to justify a dedicated position."[5] The manager further asserted that this work volume could be absorbed by other employees and by the agency's technology vendor under an existing contract.[6] Indeed, based on EDR's follow up with the agency pursuant to this reconsideration request, there was little work to be reassigned after the grievant's layoff. Nothing in the grievant's reconsideration request contradicts this assessment of the grievant's workload. Additionally, EDR has long held that the grievance procedure accords much deference to management's exercise of judgment, including decisions as to what work units will be affected by layoff and the business functions to be eliminated or reassigned. Thus, EDR has no basis to dispute the agency's determination that the grievant's position was properly impacted by layoff due to lack of work.

One of the grievant's arguments in her request for reconsideration is that other agency employees (an IT Operations Specialist and a No-Wrong Door (NWD) Expansion Specialist) had equivalent or lesser workloads. EDR considered this argument in the prior ruling, finding that "the grievant's description of her peers' responsibilities and duties is not consistent with their respective Employee Work Profiles or management's stated expectations for those positions."[7] While we appreciate the grievant's assertions, EDR has been presented with no information to support the contention that these two individuals had the same low workload as the grievant. Furthermore, the agency's assessment, which contradicts the grievant's contentions, is due appropriate deference. Importantly, these two positions, as was discussed in the prior ruling, had differing duties than the grievant's position, something that the grievant additionally disputes.

The grievant argues that her duties were similar to those of the IT Operations Specialist. She states that she "performed comparable tasks, including initial implementation and ongoing technical support, end-user training via phone or zoom, and creation of live, recorded, and written content across multiple media formats." Whether the grievant and the IT Operations Specialist performed similar duties is relevant to the grievant's argument on reconsideration that EDR "failed to acknowledge that DHRM Policy 1.30, Layoff, mandate[s] considering seniority when determining which employees will be impacted by a layoff." While the grievant is correct to state that seniority is a consideration in determining who will be affected by layoff, the agency's application of the requirement in this case was consistent with DHRM's interpretation of the layoff policy.

The policy states that "[s]eniority must be used by agencies when determining … who will be affected by layoff."[8] The consideration of seniority in this regard is determined by the layoff

[5] EDR Ruling No. 2025-5856 at 2.
[6] *Id.*
[7] *Id.* at 4.
[8] DHRM Policy 1.30, *Layoff*, at 3.

sequence. Accordingly, the policy goes on to state that "[a]fter identifying the work that is no longer needed or that must be reassigned, agencies must identify employees for layoff within the same work unit, geographic area, and Role, who are performing substantially the same work" and proceed with layoffs according to affected employees' work status and seniority.[9] The grievant argues that the IT Operations Specialist performed similar work to her and had less seniority. As such, she appears to suggest that the agency should have subjected the IT Operations Specialist to layoff pursuant to policy instead of herself. Accordingly, a determining factor here is whether the grievant and the IT Operations Specialist were performing "substantially the same work." If the two positions are not determined to have been performing "substantially the same work," then the question of seniority is not reached. Where the agency determines that the grievant is the only employee performing the work that is no longer needed or to be reassigned, and no other employees are performing "substantially the same work," then the grievant is the only employee impacted by layoff, which was the case here.[10]

Pursuant to the policy, employees should be considered to be performing "substantially the same work" according to the following factors:

- The positions have similar job duties; knowledge, skills, and abilities; and other job requirements;
- The positions are in the same work unit;
- The positions have the same Role, work title, and/or standard classification code; and
- The positions are at the same reporting level in the organizational structure.[11]

EDR considered these factors at length in the prior ruling and we incorporate that discussion here by reference.[12] EDR agrees with the agency's conclusion that, although the grievant and the IT Operations Specialist in the grievant's work unit had the same Role and reporting level, their work titles, work duties, and required knowledge, skills, and abilities were not similar for purposes of layoff.[13] We would acknowledge that the grievant is not wrong to suggest that she performed duties that were comparable to the IT Operations Specialist in some respects such that it is reasonable to consider that position as a potential comparator. However, when the listed factors of the two positions are analyzed, as EDR did in the prior ruling, EDR has no basis to dispute the agency's determination, which is due appropriate deference, that the two positions did not perform "substantially the same work." Therefore, under the layoff sequence, there was only one employee to consider, the grievant, making seniority not a factor under this proper application of policy.[14]

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[9] *Id*.
[10] *See* EDR Ruling No. 2025-5856 at 4.
[11] DHRM Policy 1.30, *Layoff*, at 3.
[12] EDR Ruling No. 2025-5856 at 3-5.
[13] *See id.*
[14] The grievant notes that she had the requisite skills to perform the IT Operations Specialist role. Although the agency disputes such a contention, and EDR has no reason to disagree with the agency's assessment, even if that were the case, there is no provision of the policy that would have required the agency to assign all of the IT Operations Specialist's duties (which were not being eliminated) to the grievant to subject the IT Operations Specialist to layoff. Had the agency done so, it could at least arguably have been considered a misapplication of the policy.

The grievant also appears to take issue with the agency's attempts to add certain duties to her position and the communications that occurred between herself and management about that topic. The grievant suggests that the agency attempted to show that she refused to accept the additional duties. Based on EDR's review of this issue, the potential for the addition of duties to the grievant's position was a non-material issue to the analysis of this case. As the agency stated during the resolution steps, even with the addition of the duties that were considered (though never actually added to the grievant's position), there still would not have been a sufficient amount of work assigned to the grievant's position to warrant its continuation based on the agency's assessment. EDR has been presented with no information that would dispute that conclusion. Accordingly, whether the grievant refused duties the agency proposed assigning to her is not relevant.

Discrimination

The grievant states that as "an African American woman over 40 with seniority, my qualifications and tenure were disregarded, while younger, white colleagues in the same Information Technology Specialist I Role, namely the IT Operations Specialist and No Wrong Door (NWD) Expansion Specialist, were retained despite equivalent or lesser workloads, evidencing discrimination based on race, age, and gender." While the policy-based considerations in this argument have been addressed above, the grievant specifically asserts that her selection for layoff had a discriminatory basis. 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; sexual orientation; gender identity or expression; age; veteran status; political affiliation; disability; genetic information; and pregnancy, childbirth, or related medical conditions."[15] 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.[16]

In this case, we will presume that the grievant meets some of the minimum threshold requirements of a claim of discrimination in that she has asserted that those who were not laid off were of different race, age, and/or gender than the grievant. However, as described above, the agency has presented evidence of a nondiscriminatory, policy-driven basis for the layoff decision. Ultimately, there is insufficient evidence to show that the agency's stated reasons for the layoff were a pretext for discrimination. 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.

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[15] DHRM Policy 2.05, *Equal Employment Opportunity*, at 1.
[16] *See* Strothers v. City of Laurel, 895 F.3d 317, 327-28 (4th Cir. 2018); *see*, *e.g.*, EDR Ruling No. 2020-4956.

Retaliation

The grievant also claims that her layoff is a form of retaliation. EDR noted in the prior ruling the grievant's history of raising concerns about the air quality in her workplace, including the issue of air freshener use.[17] On reconsideration, the grievant additionally points to her communications with management in December 2024 when another employee raised a concern about air fresheners in the workplace. A claim of retaliation may qualify for a hearing if the grievant presents evidence raising a sufficient question whether (1) they engaged in a protected activity; (2) they suffered an adverse employment action; and (3) a causal link exists between the protected activity and the adverse action.[18] If the agency presents a nonretaliatory business reason for the adverse employment action, the grievance does not qualify for a hearing, unless the employee presents sufficient evidence that the agency's stated reason was a mere pretext or excuse for retaliation.[19] Ultimately, a successful retaliation claim must demonstrate that, but for the protected activity, the adverse action would not have occurred.[20]

While we presume that the grievant engaged in protected activity and suffered an adverse employment action, there is insufficient evidence to suggest that, but for her protected activity, she would not have been laid off. As has been discussed, the agency has proffered a legitimate business reason for the layoff. After a thorough review of the record, EDR is unable to find evidence raising a sufficient question as to whether the layoff would not have occurred but for the grievant's protected activity. In addition to what she provided in her original grievance, the grievant reemphasizes on reconsideration that the agency's retaliation was demonstrated by the fact that she was issued a replacement laptop shortly before her layoff, which, she suggests, indicates that the agency planned for her to continue to be employed.[21] Similarly, the grievant suggests that the agency converted her supervisor's planned performance evaluation meeting with her into a meeting to discuss her layoff. We are not persuaded that the grievant's arguments raise a sufficient question of a causal link between her protected activity and her layoff. More importantly, there has been insufficient evidence to demonstrate the agency's business justification for the layoff as pretext. Furthermore, there are no facts that would indicate the grievant's protected activity was a but-for cause of the layoff decision. For the foregoing reasons, the grievance does not qualify for a hearing on the basis of retaliation.

CONCLUSION

For the reasons expressed above and as described in the prior ruling, the facts presented by the grievant do not constitute a claim that qualifies for a hearing under the grievance procedure at

[17] EDR Ruling No. 2025-5856 at 5-6.
[18] *See* Netter v. Barnes, 908 F.3d 932, 938 (4th Cir. 2018) (citing Univ. of Tex. S.W. Med. Ctr. v. Nassar, 570 U.S. 338, 360 (2013)); Villa v. CavaMezze Grill, LLC, 858 F.3d 896, 900-901 (4th Cir. 2017).
[19] *See*, *e.g.*, Felt v. MEI Techs., Inc., 584 Fed. App'x 139, 140 (4th Cir. 2014).
[20] *Id.*
[21] *See* EDR Ruling No. 2025-5856 at 5-6.

this time.[22] Accordingly, EDR declines to reconsider its earlier determination that this grievance does not qualify for a hearing. EDR's qualification rulings are final and nonappealable.[23]

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[22] *See Grievance Procedure Manual* § 4.1. To the extent this ruling does not address any specific issue raised in the grievance, EDR has thoroughly reviewed the grievance record and determined that the grievance does not raise a sufficient question as to whether discrimination, retaliation, or discipline may have improperly influenced any management decision cited in the grievance, or whether the agency may have misapplied and/or unfairly applied state policy that would warrant qualification for a hearing.
[23] *See* Va. Code § 2.2-1202.1(5).