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**QUALIFICATION RULING**

In the matter of the Department of Behavioral Health and Developmental Services  
Ruling Number 2026-5915  
August 18, 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 May 12, 2025 grievance with the Department of Behavioral Health and Developmental Services (the “agency”) qualifies for a hearing. For the reasons discussed below, the grievance does not qualify for a hearing.

FACTS

The grievant interviewed for a warehouse supervisor position but was not selected. The grievant submitted this grievance on or about May 12, 2025 to contest the selection process as he believes he was more qualified than the candidate chosen for the supervisor position. For example, the grievant indicates that he has worked in the warehouse for eight years and has filled in for the supervisor position previously. The grievance proceeded through the resolution steps, with the step responses relying on the candidates’ relative performances during the interview portion of the selection process. The first-step respondent indicated that “[s]election for a position is solely based on an individual’s response to the questions asked by the panel, during the interview.” The second-step respondent echoed this sentiment by stating that “the responses of each candidate in their interview are the basis upon which selections are made.” However, the respondent went on to say that “an internal candidate cannot be credited with knowledge, skills and abilities that they do not expressly communicate through the interview process.” Following the management resolution steps, the agency head declined to qualify the grievance for a 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.<sup>1</sup> Additionally, the grievance statutes and procedures reserve to management the exclusive right to manage the affairs and operations of state government.<sup>2</sup> By statute and under the grievance procedure,

<sup>1</sup> See *Grievance Procedure Manual* §§ 4.1 (a), (b).

<sup>2</sup> See Va. Code § 2.2-3004(B).

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.<sup>3</sup> Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve “adverse employment actions.”<sup>4</sup> 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.”<sup>5</sup> For purposes of this ruling only, EDR will assume that the grievant has alleged an adverse employment action in that he was denied a promotion for which he 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.<sup>6</sup>

We interpret the grievance as the grievant contending that the agency misapplied policy in its decision not to select him as the most experienced candidate for the warehouse supervisor position. 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. 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.<sup>7</sup> Moreover, the grievance procedure accords much deference to management’s exercise of judgment, including management’s assessment of applicants during a selection process. Thus, a grievance that challenges an agency’s action like the selection 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.<sup>8</sup>

DHRM Policy 2.10, *Hiring*, 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, either written or electronically, applicants’ responses to questions to assist with their evaluation of each candidate’s qualifications.”<sup>9</sup> Further, a candidate’s suitability for a

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<sup>3</sup> *Id.* §§ 2.2-3004(A), (C); see *Grievance Procedure Manual* §§ 4.1(b), (c).

<sup>4</sup> See *Grievance Procedure Manual* § 4.1(b); see Va. Code § 2.2-3004(A).

<sup>5</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>6</sup> See, e.g., EDR Ruling No. 2017-4477; EDR Ruling No. 2017-4509.

<sup>7</sup> DHRM Policy 2.10, *Hiring*, at 23.

<sup>8</sup> See *Grievance Procedure Manual* § 9 (defining arbitrary or capricious as “[i]n disregard of the facts or without a reasoned basis.”).

<sup>9</sup> DHRM Policy 2.10, *Hiring*, at 12.

particular position is not always readily apparent by a plain reading of the comments recorded during an interview. Finally, 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.”<sup>10</sup> 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 interview phase, rather than the availability of a more suitable candidate, caused the grievant’s non-selection as the finalist for the position.

EDR has thoroughly reviewed the application materials and interview notes for both the grievant and the candidate ultimately selected. While we recognize the grievant has more experience with the agency and in the particular facility where the supervisor position is located, the selected candidate also has experience relevant to the role. As it relates to the interviews, it would appear that the interview notes reflect that the selected candidate had slightly better feedback regarding the answers provided than the grievant. It appears that both candidates were recommended for hire by two of the three members of the panel. It is interesting that the hiring manager preferred the grievant over the selected candidate. Unfortunately, the hiring manager has resigned from the agency and EDR has not obtained any information from that individual that would have explained his assessment of the candidates’ performances. As such, the agency appears to have made a judgment call between these two candidates and selected the one that was felt to have had the better interview performance. In the absence of evidence demonstrating such a decision to be arbitrary and capricious, which is the case here, management’s decision in this regard is due appropriate deference.

Although the grievant may reasonably disagree with the panel’s decision in this case, EDR’s review of the grievance record indicates that the selection panel concluded the finalist would be more suitable for the position based upon a reasonable assessment of interview performance. 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 cannot find that the grievant was so clearly a better candidate that the selection panel’s recommendations disregarded the facts or were anything other than a reasonable exercise of discretion based on a good faith assessment of which of the candidates was most suitable for the position, based on their performance at their interviews. The grievant has not presented evidence to demonstrate that he was not selected for an improper reason or that the agency’s determination disregarded the pertinent facts or was otherwise arbitrary or capricious. Further, 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 finalist. Accordingly, the grievance does not raise a sufficient question as to whether the agency misapplied and/or unfairly applied policy and does not qualify for a hearing on this basis.

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<sup>10</sup> *Rules for Conducting Grievance Hearings* § VI(C)(1).

EDR's qualification rulings are final and nonappealable.<sup>11</sup>

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<sup>11</sup> Va. Code § 2.2-1202.1(5).