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QUALIFICATION RULING

In the matter of the Department of General Services
Ruling Number 2026-5923
September 16, 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 15, 2025 grievance with the Department of General Services (the "agency") qualifies for a hearing. For the reasons discussed below, this grievance is not qualified for a hearing.

FACTS

The grievant is employed as a group manager for the agency at one of their laboratory facilities. On or about July 10, 2024, the grievant's supervisor initiated a pay action worksheet (PAW) on the grievant's behalf to request "a temporary pay increase of 7% for [the grievant] until which time, [the facility] secures the funding needed to create additional managerial positions to reorganize sections to address span of control and reduce the number of direct reports under [the grievant]." The accompanying pay action form submitted by the supervisor classified this action as an in-band adjustment. However, this initial request for an in-band adjustment was denied, with Human Resources instead recommending a temporary pay action. The temporary pay action was then requested, approved, and went into effect on July 25, 2024.

On April 16, 2025, the Deputy Director requested that the grievant's supervisor cease the temporary pay for the grievant effective April 24, 2025. Following the discontinuation of the grievant's temporary pay, she filed this grievance to assert that the temporary pay was in fact an in-band adjustment that should not have been discontinued. The grievant states that her supervisor told her the pay action was effective until her span of control could be reduced but did not tell her that the pay action was classified as temporary pay, and that it was communicated to her that it was classified as an in-band adjustment. She further argues that it was improper to discontinue the temporary pay because her span of control duties had not been reduced.

The agency explained in the step responses that the temporary pay adjustment was discontinued because extensions beyond the 180 days allotted by policy must be approved and such an extension was not approved. They further explained that the facility's management initially requested an in-band adjustment on February 28, 2024, but because Human Resources determined that there was no appropriate justification to support it, a temporary pay or bonus would

be more appropriate as an interim measure. Therefore, temporary pay was requested and approved as a temporary measure where the facility's management was instructed to review the organizational structure and develop strategies to address the span of control issues.

Additionally, in the agency's third-step response, it was determined that the grievant's temporary pay would be retroactively reinstated back to April 25, 2025 and would continue through August 9, 2025, to allow time for the facility to address the span of control issues. The response also ordered that the grievant's facility would "take action no later than August 9, 2025 to reduce [the grievant's] span of control to coincide with the removal of … temporary pay." The grievant has since taken issue with the latter directive, asserting that she has never requested her span of control duties to be reduced and that this directive is retaliatory. The Deputy Director in her qualification decision asserted that the agency's plan to address the span of control issues predated the grievance by almost one year, since July 2024.

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.[1] The grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.[2] Claims relating solely to the establishment and revision of salaries, wages, and general benefits 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 or agency policy may have been misapplied or unfairly applied.[3]

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions."[4] 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."[5] For purposes of this ruling only, EDR will assume that the grievant has alleged an adverse employment action to the extent the grievant's pay is impacted by a misapplication of policy.

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

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[1] *See Grievance Procedure Manual* §§ 4.1 (a), (b).
[2] *See* Va. Code § 2.2-3004(B).
[3] *Id.* § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).
[4] *See Grievance Procedure Manual* § 4.1(b); *see* Va. Code § 2.2-3004(A).
[5] *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").

does not have the authority to grant the relief requested by the grievant and no other effectual relief is available.[6]

Compliance Issues

As a preliminary matter, the grievant has raised a compliance issue following the agency's qualification decision. Specifically, the grievant takes issue with the fact that the qualification decision was issued by the same individual who issued the third-step response. The grievant is arguing that, because the third-step respondent allegedly threatened retaliatory action against her in the third-step response, it was improper for that respondent to be the one to also issue the qualification decision. The grievant alleges retaliation by the third-step respondent stating that, on August 9, concurrent with the discontinuance of the grievant's extended temporary pay, the grievant's span of control duties would be reduced.

The Grievance Procedure generally requires the agency head to issue the qualification decision[7] unless that authority has been delegated or a designee otherwise designated. The qualification decision does not provide clarity as to why the individual who served as the third-step respondent was also providing the qualification decision, though this could have been an appropriate delegation by the agency head if it were so made. Regardless, absent just cause, EDR generally disfavors back-tracking in the steps of grievances as repeating steps would normally only serve to waste time, duplicate effort, and needlessly delay the grievance process.[8] Consequently, such just cause being absent here, consistent with EDR's prior precedent we determine that the appropriate result in this instance is for the grievance to proceed through to this qualification ruling and EDR will address the grievant's retaliation claim separately.

Retaliation

The grievant challenges as retaliation the third-step respondent's statement that, no later than August 9, the grievant's span of control duties would be reduced. The grievant argues that this is a retaliatory action for filing her grievance. 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.[9] Ultimately, a successful retaliation claim must demonstrate that, but for the protected activity, the adverse action would not have occurred.[10] 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.[11]

Here, while the grievant engaged in a protected activity by filing a grievance, it is not apparent from a thorough review of the available facts that the agency has taken any adverse action against the grievant regarding the span of control duties. The agency has since confirmed to EDR

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[6] *See*, *e.g.*, EDR Ruling No. 2021-5261; EDR Ruling No. 2017-4477.
[7] *Grievance Procedure Manual* § 4.2.
[8] *See*, *e.g.*, EDR Ruling No. 2017-4475; EDR Ruling No. 2014-3902.
[9] *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).
[10] *Id.*
[11] *See*, *e.g.*, Felt v. MEI Techs., Inc., 584 Fed. App'x 139, 140 (4th Cir. 2014).

that a plan was advanced to address the span of control issues at the grievant's facility by establishing a co-manager position for the facility, but such changes have not yet been implemented. EDR is unaware of any information to suggest that this position has been filled and that the grievant's span of control duties have been reduced. While the grievant's concern over the planned changes is understandable, only actions initially grieved in the grievance can be considered for qualification for a hearing. As such, with regard to the potential changes of the grievant's duties, there is effectively no relief that could be granted by a hearing officer at this time. If the grievant's duties are ultimately changed in some way, she may choose to file an additional grievance to contest those actions.

Notwithstanding the point that no adverse employment action has yet to occur regarding the planned changes in duties, EDR will still address the grievant's arguments for why the planned changes are retaliatory. While the grievant concedes that the agency is given appropriate discretion in determining the methods, means, and personnel by which work is performed, she argues that she is being singled out with the changes proposed by the agency. Nevertheless, the agency has thoroughly explained its basis for the potential span of control duties being changed. The agency has further asserted that planning to address the grievant's span of control was first addressed in July 2024, well before the filing of this grievance.

After a review of the available evidence, EDR cannot find a causal link between the filing of the grievance and the planned span of control changes. As both parties have alluded to, management reserves the exclusive right to manage the affairs and operations of state government, as well as the right to manage the methods, means, and personnel by which work activities are carried out.[12] Importantly, the span of control changes appear to have been considered prior to the filing of this grievance. For these reasons, EDR cannot find that, regardless of whether the changes have yet to be implemented, a casual link exists between the filing of the grievance and the agency's plan to reduce the grievant's duties. Therefore, EDR declines to qualify the grievance for a hearing on this basis. However, nothing in this ruling prevents the grievant from filing a grievance to address any future matters, such as reduction of the grievant's span of control, if indeed that is to occur.

Temporary Pay

The primary basis for the grievance at hand is that the grievant contests the discontinuance of her temporary pay, arguing that it was improper to classify it as temporary pay and should have instead been classified as an in-band adjustment with no definite end. Throughout the grievance process, the grievant has cited DHRM Policy 3.05, *Compensation*. She argues that the relevant provisions on Temporary Pay do not apply to her because the duties she is being additionally compensated for are not temporary duties, but duties that she has held since 2019. She also adds that the temporary pay was originally classified as an in-band adjustment and that it was communicated to her that the pay action was an in-band adjustment. 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.

[12] *See* Va. Code §§ 2.2-3004(A), (B).

The Temporary Pay provision of DHRM Policy 3.05, *Compensation*, states that:

> Agencies may provide temporary pay to an employee who is assigned different duties at the same or higher level of responsibility on an interim basis, or because of the need for additional assignments associated with a special time-limited project, or for acting in a higher-level position in the same or different Role in the same or a higher Pay Band, or for military pay supplements. . . .
>
> Temporary pay is a non-competitive management-initiated practice paid at the discretion of the agency.[13]

Here, the available facts show that, initially, a pay action worksheet (PAW) was submitted to request an in-band adjustment for the grievant. However, that request was denied, with Human Resources instead recommending that a temporary pay action be granted. From there, the grievant's supervisor submitted a new PAW but for a temporary pay action, which was granted by Human Resources. The available facts also show that the grievant appears to have been initially misinformed that she was given an in-band adjustment. The approved PAW stated that "[d]ue to an inability to expand managerial leadership at this time, [the grievant's] scope of testing and number of direct reports exceeds all other groups within the Division." It goes on to request a temporary pay increase "until which time, [the grievant's division] secures the funding needed to create additional managerial positions to reorganize sections to address span of control and reduce the number of direct reports under [the grievant]."

DHRM Policy 3.05 uses permissive language such as "may" and "at the discretion of the agency" with regard to temporary pay.[14] The section states that the agency *may* utilize temporary pay as a way of compensating employees for taking on temporary roles or additional duties; the Policy does not require agencies to do so. At the same time, it suggests that the agency may consider relevant factors in determining whether temporary pay is needed. Here, the agency has stated that temporary pay was necessary because the grievant had a span of control that exceeded all other groups in the grievant's division. The grievant primarily takes issue with the language in DHRM Policy 3.05 that states that temporary pay may be granted to an employee who is assigned different duties *on an interim basis* (emphasis added). While the grievant asserts that her duties have remained static since 2019, due to the permissive language of the relevant portion of the policy, EDR cannot find that it was improper to grant temporary pay even if the grievant's duties remained unchanged. The agency determined that the grievant's current assignments justified the pay increase, but that those circumstances could change in the future. Accordingly, addressing such a potentially non-permanent situation through temporary pay seems to be an appropriate utilization of the policy.

The grievant also argues that the temporary pay action violates policy because (1) it exceeded the allotted 180 days required by the agency's Salary Administration Plan and (2) it was improper to discontinue the temporary pay as it should have always been treated as an in-band adjustment. Regarding the first point, the grievant cites the agency's *Salary Administration Plan and Guidelines*, which states that "Temporary pay will be for up to 180 days. Extensions beyond 180 days shall be approved by the [agency] Director or designee." While the agency admits that it

[13] DHRM Policy 3.05, *Compensation*, at 5.
[14] *Id.*

did not take any action beyond the 180 days and allowed the temporary pay action to run from July 2024 through April 2025, we do not agree that the failure to act somehow invalidated the temporary pay action or demonstrated that it should have been considered an in-band adjustment. Even though the Salary Administration Plan required an extension, EDR is not aware of a policy provision that prevents a temporary pay action from being longstanding if the circumstances are warranted.

As to the second point, as discussed, it was not improper to request and grant a temporary pay action instead of an in-band adjustment. Once the circumstances justifying the temporary pay, i.e., the grievant's span of control, are changed, it understandably would lead to the discontinuance of the temporary pay in the agency's determination. Accordingly, EDR cannot find that the agency misapplied or unfairly applied policy by granting temporary pay instead of an in-band adjustment and discontinuing the temporary pay after over 180 days.

While we appreciate the grievant's arguments, it appears that the agency properly utilized its discretion in determining that a temporary pay action was more appropriate than an in-band adjustment. The agency is responsible for reviewing individual pay actions to ensure that they are consistent with DHRM Policy 3.05, both in relation to the affected employee and the agency as a whole. DHRM policy does not mandate temporary pay – it only allows the agency to grant such pay increases within their own discretion. In this case, the agency determined that the grievant's additional duties justified increasing the grievant's salary, but only until the related span of control issues were addressed. We have not reviewed evidence to suggest that the agency disregarded any relevant facts in making that decision. As stated above, DHRM Policy 3.05 is intended to grant the agency flexibility to address issues such as changes in an employee's job duties and temporary salary adjustment in response to necessary factors such as increased workload or decreased staff availability.[15] The policy is not intended to limit the agency's discretion to evaluate whether an individual pay action is warranted. Considering the totality of the circumstances, the record does not support a conclusion that the agency's decision to administer and discontinue temporary pay to the grievant violates any specific policy requirement. For these reasons, EDR cannot find that the agency's decision was improper or otherwise arbitrary or capricious.

CONCLUSION

For the reasons discussed above, EDR finds that the facts presented in the grievance record do not constitute a claim that qualifies for a hearing under the grievance procedure.[16] EDR's qualification rulings are final and nonappealable.[17]

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[15] *See* DHRM Policy 3.05, *Compensation*.
[16] *Grievance Procedure Manual* § 4.1.
[17] *See* Va. Code § 2.2-1202.1(5).