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ACCESS RULING

In the matter of the Department for the Blind and Vision Impaired
Ruling Number 2023-5571
June 21, 2023

On June 14, 2023, the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) received a Dismissal Grievance Form from the grievant. Because the grievant was separated during her probationary period, the Department for the Blind and Vision Impaired (the “agency”) challenges whether she has access to the grievance procedure.

DHRM Policy 1.45, *Probationary Period*, states that employees “who begin either original employment or re-employment in classified positions must serve 12-month probationary periods effective from the dates of their employment.”¹ The General Assembly has further provided that all *non-probationary* state employees may utilize the grievance process, unless exempted by law.² The grievant began employment in a classified position at the agency on December 10, 2022, and was terminated from employment on April 10, 2023. As a result, she had not completed her 12-month probationary period at the time of her separation. Employees who have not completed their probationary period do not have access to the grievance procedure.³ Accordingly, the grievant does not have access to the grievance procedure to initiate a grievance challenging her termination.⁴ Therefore, this dismissal grievance will not proceed to a hearing and EDR will close its file.⁵

¹ DHRM Policy 1.45, *Probationary Period*, at 1.

² Va. Code § 2.2-3001(A); *Grievance Procedure Manual* § 2.3.

³ E.g., EDR Ruling No. 2020-5017; EDR Ruling No. 2019-4920.

⁴ Although not necessary to resolve the question of access, EDR agrees with grievant that the grievance appears on its face to be untimely. A grievance must be initiated “within 30 calendar days of the date the employee knew or should have known of the management omission being grieved.” *Grievance Procedure Manual* § 2.2. Failure to file the grievance within the 30-calendar-day period “will typically result in the grievance being administratively closed” and “will be excused only in extraordinary cases where just cause has been found.” *Id.* The Grievant has not alleged any just cause for a late filing.

⁵ This ruling does not address whether any legal or other remedy may be available to the grievant based on her concerns about her termination. This ruling only determines that she is ineligible to pursue her claims through the state employee grievance procedure. For example, the grievant notes she has already pursued a complaint with the federal Equal Employment Opportunity Commission. The grievant could also submit a discrimination complaint to the agency’s human resources office. The outcome of such a complaint is potentially appealable for review by DHRM. Please contact DHRM’s Office of Workforce Engagement at 1-800-533-1414 for more information.

EDR's access rulings are final and nonappealable.⁶

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⁶ Va. Code § 2.2-1202.1(5).