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ACCESS RULING

In the matter of the Department of Corrections
Ruling Number 2023-5484
December 7, 2022

On November 10, 2022, the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) received a Dismissal Grievance Form A from the grievant, challenging her separation from employment with the Department of Corrections (the “agency”). The agency has asserted that the grievant does not have access to the grievance procedure and also that, even if she did have access, the grievance would be untimely.

As presented to EDR, the dismissal grievance alleges that the agency terminated the grievant’s employment effective October 9, 2022. However, the agency has produced a letter of resignation from the grievant, purporting to be effective October 6, 2022. The grievant has confirmed that she resigned, but maintains that she did so “because they told me I had to.” Notwithstanding the resignation issue, the agency has also indicated that the grievant’s separation from employment occurred during her 12-month probationary period, as she began her employment on November 10, 2021. Finally, the agency points out that the grievance is not timely filed.

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 Here, according to the information offered by the parties, the grievant would not have completed her 12-month probationary period until November 10, 2022. Therefore, it appears she was a probationary employee regardless of the nature of her separation (*i.e.* termination or resignation) and which day in October it was effective.³

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

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

³ Although not necessary to resolve the question of access, EDR agrees with the agency that the grievance also appears on its face to be untimely. The grievance form references a dismissal on October 9, 2022. Even if accurate, 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 is found.” *Id.* The grievant has not alleged any just cause for a late filing.

Accordingly, EDR finds that the grievant does not have access to the grievance procedure.⁴ As a result, this dismissal grievance will not proceed to a hearing and EDR will close its file.⁵

EDR's access rulings are final and nonappealable.⁶

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⁴ *E.g.*, EDR Ruling No. 2020-5116; EDR Ruling No. 2011-2940.

⁵ This ruling does not address whether the grievant may have some other remedy, legal or otherwise, as to this situation. This ruling only determines that she is ineligible to pursue her claims through the state grievance procedure.

⁶ Va. Code § 2.2-1202.1(5).