



JANET L. LAWSON
DIRECTOR

COMMONWEALTH OF VIRGINIA
Department Of Human Resource Management
Office of Employment Dispute Resolution

James Monroe Building
101 N. 14th Street, 12th Floor
Richmond, Virginia 23219

Tel: (804) 225-2131
(TTY) 711

ACCESS RULING

In the matter of the University of Virginia
Ruling Number 2023-5583
July 14, 2023

On June 11, 2023, the grievant filed a grievance with the University of Virginia (the “university” or “agency”). As the grievant’s employment was terminated on February 17, 2023, the university contends that the grievant does not have access to the grievance procedure. The grievant has requested a ruling from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) on this question.

FACTS

In the June 11, 2023 grievance, the grievant seeks to challenge two documents apparently part of his personnel file with the university: 1) a CY22 Academic Year-End Narrative record, and 2) a 20-21 Academic Probationary Goal Alignment Touchpoint record. The grievant reportedly discovered these documents when the university provided access to a copy of the grievant’s personnel file pursuant to his request in a separate grievance matter concerning the grievant’s termination.¹ The university provided the grievant with access to these materials on May 5, 2023. After receiving the grievance on June 11, 2023, the university determined that the grievant does not have access to the grievance procedure as he was terminated on February 17, 2023. The grievant seeks this ruling to challenge the university’s determination.

DISCUSSION

The CY22 Academic Year-End Narrative document appears to be a portion of an annual evaluation of the grievant’s performance for the calendar year 2022. The document is dated March 1, 2023, and notes that it was not provided to the grievant because it was completed after his termination. According to the university, the university’s performance management system cues managers to perform performance management functions in accordance with applicable deadlines. Therefore, the system continued to generate prompts to complete the grievant’s performance

¹ The grievant has also submitted the argument that the records challenged in the June 11, 2023 grievance are relevant to his grievances concerning his termination (Case Nos. 11948 and 11971). This ruling has no bearing on what issues are relevant in those grievances. Such questions should be addressed to the hearing officer appointed for Case Numbers 11948 and 11971.

evaluation apparently even after his termination. To eliminate the prompt, the manager completed his portion of the grievant's performance evaluation and submitted the narrative information to the system. The system then appears to have incorporated that information into the CY22 Academic Year-End Narrative document, which apparently became part of the grievant's personnel file.

The 20-21 Academic Probationary Goal Alignment Touchpoint document is undated. The grievant states that he believes that the record was created after his termination and EDR will assume that to be the case based on this representation. The grievant suggests that the individual who completed this document was not an appropriate evaluator because he was not the grievant's manager at the time. It appears, again, that this record was completed due to an item pending in the university's system similar to the discussion above. Furthermore, the record speaks for itself as to its limited content, with the manager stating, "no ability to evaluate this any longer (way past due)."

Section 2.3 of the *Grievance Procedure Manual* provides that the grievant "[m]ust have been a non-probationary employee of the Commonwealth at the time the management action or omission that formed the basis of the dispute occurred." As the grievant was no longer employed in a position with access to the grievance procedure at the time these documents were generated, the grievant does not have access to the grievance procedure to challenge these issues.²

Although the grievant does not have access to challenge these documents, EDR would observe that the existence of especially the CY22 Year-End evaluation record in the grievant's personnel file is unusual. For example, under state human resource policy, which does not necessarily apply here, an employee's evaluation is retained in the personnel file "when completed."³ Since this evaluation has not been completed, as it was never issued to the grievant, it seems an unusual result that it would be retained in the grievant's personnel file. EDR would recommend that the agency remove this record from the official personnel file, to the extent that is where it is being maintained. However, should the grievant be reinstated to his position through his dismissal grievance, nothing would prevent the university from proceeding with the calendar year 2022 evaluation at that point. The grievant would then have the opportunity to challenge the final evaluation through the grievance process.

² While we need not reach this issue, it is also observable that the June 11, 2023 grievance would not be considered timely initiated. The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date they knew or should have known of the event or action that is the basis of the grievance. Va. Code § 2.2-3003(C); *Grievance Procedure Manual* §§ 2.2, 2.4. Providing all benefits of the doubt to the grievant, we know at a minimum that he became aware of the documents no later than when he received information from the university in the process of his dismissal grievance. The information provided indicates that the grievant received access to the materials on May 5, 2023. Accordingly, to the extent any records existed in that file that were subject to being grieved (and the grievant did not know about them previously), then he would have needed to file a grievance within 30 calendar days, by June 5, 2023. Thirty calendar days from May 5, 2023 would have been June 4, 2023 – a Sunday. Where the 30th calendar day falls on a weekend, the grievance may be filed on the next business day on which state offices are open. *Grievance Procedure Manual* § 2.2. In this instance, the next business day would have been Monday, June 5, 2023.

³ DHRM Policy 1.40, *Performance Planning and Evaluation* ("Retention of Performance Forms").

CONCLUSION

Accordingly, EDR finds that the grievant does not have access to the grievance procedure to initiate the June 11, 2023 grievance. The parties are advised that the grievance should remain administratively closed and no further action is required.⁴

EDR's rulings on access and compliance are final and nonappealable.⁵

Christopher M. Grab
Director
Office of Employment Dispute Resolution

⁴ 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 he is ineligible to pursue his claims through the state grievance procedure.

⁵ Va. Code § 2.2-1202.1(5).