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ACCESS AND COMPLIANCE RULING

In the matter of the Department of Behavioral Health and Developmental Services
Ruling Number 2024-5588
September 22, 2023

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether her May 10, 2023 expedited grievance with the Department of Behavioral Health and Developmental Services (the “agency”) qualifies for a hearing. Although the grievance proceeded through all management steps, the agency head denied qualification for a hearing in part because the alleged management actions that were grieved occurred during her probationary period and, thus, the grievant lacks access to the grievance procedure. The agency also asserts that the grievance was not filed timely. Accordingly, EDR will address the matters of access and compliance with the grievance procedure.

FACTS

The grievant began working for the agency on July 10, 2021. Due to an investigation related to alleged workplace violence, the grievant was placed on unpaid administrative leave from April 29, 2022 through May 20, 2022. Upon the conclusion of the investigation, on May 16, 2022, the agency sent the grievant a letter notifying her that her probationary period would be extended 90 days from the end of her original one-year probationary period, making her probationary period last through October 9, 2022. On May 10, 2023, the grievant filed a grievance with the agency primarily alleging that she has experienced bullying and targeting by one of her supervisors since her probationary period was extended, that the supervisor did not properly conduct her 2022 performance evaluation, and that the supervisor has “blocked” her from multiple job positions that she applied for over the course of 2022. As relief, she has primarily requested the opportunity for a fair interview in a position she qualifies for and an unbiased evaluation of her job performance.

According to the agency, the grievant was separated from employment on May 19, 2023. Despite this, and notwithstanding the issues of timeliness and probationary status of the grievant at the time of the events in question, the agency’s single-step respondent issued a response after a meeting with the grievant on June 7, 2023. In that meeting he stated that he would have her supervisor reevaluate her once the grievant submitted an updated self-assessment. The grievant appealed the step respondent’s decision and requested a hearing. On July 5, 2023, the agency denied her request because the grievance was not timely and the grievant lacked access to the

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grievance procedure because the events grieved occurred during the grievant's probationary period. The grievant now appeals the agency's determination to EDR.

DISCUSSION

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 *Grievance Procedure Manual* further states that, in order to have access to the grievance procedure, 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."³

The grievant began working in a classified position at the agency on July 10, 2021, and her probationary period was properly extended through October 9, 2022. Therefore, the grievant does not have access to the grievance procedure to challenge any management actions occurring prior to October 10, 2022. Additionally, 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.⁴ When an employee initiates a grievance beyond the 30-calendar-day period without just cause, the grievance is not in compliance with the grievance procedure and may be administratively closed. In reviewing the grievance paperwork, we are unable to identify any management actions occurring within the 30 calendar days preceding the initiation of the grievance.

In consideration of the above, EDR determines that the grievant does not have access to the grievance procedure to address certain matters identified in her grievance. Further, to the extent there were management actions that occurred after the grievant became a non-probationary employee, we cannot find that this grievance is timely to challenge them as the grievance does not identify any such actions occurring within the 30 calendar days preceding initiation of the grievance. Therefore, this expedited grievance will be closed due to lack of access and noncompliance, and will not proceed to a hearing. EDR will close its file.⁵

EDR's access rulings are final and nonappealable.⁶

Christopher M. Grab
Director
Office of Employment Dispute Resolution

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

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

³ *Grievance Procedure Manual* § 2.3.

⁴ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* §§ 2.2, 2.4.

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.

⁶ Va. Code § 2.2-1202.1(5).