

Issue: Reconsidered Access Ruling; Ruling Date: February 24, 2017; Ruling No. 2017-4503; Agency: Department of Behavioral Health and Developmental Services; Outcome: Unchanged - Access Still Denied.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

RECONSIDERED ACCESS RULING

In the matter of the Department of Behavioral Health & Developmental Services
Ruling Number 2017-4503
February 24, 2017

The grievant has requested that the Office of Employment Dispute Resolution (EDR) reconsider its access determination in Ruling Number 2017-4483 (the initial access ruling), which held that the grievant did not have access to the grievance procedure in order to initiate her January 10, 2017 dismissal grievance.¹ For the reasons discussed below, EDR finds no error with the initial access determination.

At issue in the initial access ruling was whether the grievant had access to the grievance procedure in order to challenge her separation from employment because she had submitted a resignation prior to initiating her grievance.² In that ruling, EDR concluded that the grievant did not have access to the grievance procedure on the date she initiated a dismissal grievance, January 10, 2017.³ In her request for reconsideration, the grievant disputes that she voluntarily resigned, and states that when she asked about the possibility of resigning she also asked if the resignation could be effective on January 10, 2017. She asserts that she was directed to submit a resignation letter that day, but that the manager with whom she was meeting ultimately denied the requested effective date. She further alleges that the information in her personnel file was not changed to reflect “resignation in lieu of termination” until several weeks later.

EDR has considered the additional information provided by the grievant; however, the analysis of the underlying issue remains unchanged. The grievant had been notified of the issues surrounding the contemplated discipline by letter on December 12, 2016, and the letter advised that she could provide a written response to the charges before noon on December 13, 2016. In the grievant’s request for reconsideration of the initial access ruling, she notes that she did not in fact have a full twenty-four hours in which to respond to the allegations. While the exact time that the grievant was provided with the due process letter of December 12, 2016 is not clear, nevertheless, the grievant apparently provided the requested written response the same day. Per the grievant’s request for reconsideration, when the agency advised the grievant that it had “no choice’ but to terminate” her, the grievant provided the agency with a letter of resignation the same day. The letter of resignation is dated December 15, 2016. Thus, the grievant had a total of approximately three days to contemplate the proposed termination and her response to the agency. We cannot agree that, in this instance, the grievant was forced to make a decision that

¹ See EDR Ruling No. 2017-4483.

² *Id.*

³ *Id.*

would render her resignation involuntary. As such, EDR concludes that there are no grounds to reconsider or change the analysis of EDR's initial access ruling.⁴

The grievant's request for reconsideration is denied and the grievance remains closed. EDR's rulings on matters of access are final and nonappealable.⁵



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⁴ To the extent that the grievant's request for reconsideration addresses the merits of her grievance, EDR is not able to consider those arguments in this ruling.

⁵ See Va. Code § 2.2-1202.1(5).