

Issue: Access to the Grievance Procedure; Ruling Date: March 7, 2017; Ruling No. 2017-4510; Agency: Department of Corrections; Outcome: Access Denied.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Employment Dispute Resolution¹

ACCESS RULING

In the matter of the Department of Corrections
Ruling Number 2017-4510
March 7, 2017

On February 27, 2017, the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) received a Dismissal Grievance Form A from the grievant. The Department of Corrections (the “agency”) challenges the grievant’s access to the grievance procedure. For the reasons set forth below, EDR concludes that the grievant does not have access to the grievance process to initiate this grievance.

FACTS

In this case, the agency indicates that the grievant began working with the agency in a classified position on March 7, 2016. On February 6, 2017, the grievant was issued a letter terminating her from employment following a search of her vehicle that produced an illegal substance. The grievant subsequently filed a dismissal grievance directly with EDR to challenge her separation from employment. Upon receipt of a copy of the dismissal grievance, the agency has since informed EDR that the grievant was terminated prior to the end of her probationary period and, thus, should not have access to file this grievance.

DISCUSSION

DHRM Policy 1.45, *Probationary Period*, provides 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.”² The grievant had not completed her twelve-month probationary period when she was terminated on February 6, 2017. The General Assembly has provided that all *non-probationary* state employees may utilize the grievance process, unless exempted by law.³ Employees who have not completed their probationary period do not have access to the grievance procedure.⁴ Accordingly, the grievant does not have access to the grievance procedure to initiate a grievance to challenge her termination. As a result, this dismissal grievance will not proceed to a hearing and EDR will close its file.

¹ Effective January 1, 2017, the Office of Employment Dispute Resolution merged with another office area within the Department of Human Resource Management, the Office of Equal Employment Services. Because full updates have not yet been made to the *Grievance Procedure Manual*, this office will be referred to as “EDR” in this ruling to alleviate any confusion. EDR’s role with regard to the grievance procedure remains the same post-merger.

² DHRM Policy 1.45, *Probationary Period*.

³ Va. Code § 2.2-3001(A); *Grievance Procedure Manual* § 2.3.

⁴ *E.g.*, EDR Ruling No. 2005-1032.

EDR's access rulings are final and nonappealable.⁵



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⁵ Va. Code § 2.2-1202.1(5).