

Issue: Access to the Grievance Procedure; Ruling Date: July 26, 2018; Ruling No. 2018-4751; Agency: Department of Juvenile Justice; Outcome: Access Denied.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Equal Employment and Dispute Resolution

ACCESS RULING

In the matter of the Department of Juvenile Justice
Ruling Number 2018-4751
July 26, 2018

On June 25, 2018, the Office of Equal Employment and Dispute Resolution (“EEDR”) at the Department of Human Resource Management (“DHRM”) received a Grievance Form A from the grievant. The grievant’s former employer, the Department of Juvenile Justice (the “agency”), indicates that the grievant had submitted a resignation prior to initiating her grievance, thus raising a question of access to the grievance procedure. For the reasons set forth below, EEDR concludes that the grievant does not have access to the grievance procedure to initiate this grievance.

FACTS

The grievant was employed as a Licensed Practical Nurse at one of the agency’s facilities. On May 27, 2018, she alleges that she was asked to stay late to cover another employee’s shift, which she refused to do. The same day, the grievant’s supervisor sent her an email, indicating that she did not complete her required shift and, accordingly, he would be implementing changes to her schedule, effective in June 2018. On May 28, 2018, the grievant responded to her supervisor’s email by notifying him of her resignation, to be effective June 10, 2018. However, the grievant submitted a grievance directly to EEDR on June 25, 2018, challenging these actions. The agency confirms that the grievant ultimately retired effective June 1, 2018, and thus, was no longer an employee at the time she initiated her grievance.

DISCUSSION

The General Assembly has provided that “[u]nless exempted by law, all nonprobationary state employees shall be covered by the grievance procedure”¹ Upon the effective date of a voluntary resignation from state service, a person is no longer a state employee. Thus, to have access to the grievance procedure, the employee “[m]ust not have voluntarily concluded his/her employment with the Commonwealth prior to initiating the grievance.”² EEDR has long held that once an employee’s voluntary resignation becomes effective, he or she is not covered by the grievance procedure and accordingly may not initiate a grievance.³ In this case, the grievant

¹ Va. Code § 2.2-3001(A).

² *Grievance Procedure Manual* § 2.3.

³ *E.g.*, EDR Ruling No. 2005-1043.

initiated her grievance after submitting her resignation on May 28, 2018, and retiring from state service effective June 1, 2018, raising questions of access.

To have access to the grievance procedure to challenge her separation as a result of the resignation, the grievant must show that her resignation was involuntary⁴ or that she was otherwise constructively discharged.⁵ The determination of whether a resignation is voluntary is based on an employee's ability to exercise a free and informed choice in making a decision to resign. Generally, the voluntariness of an employee's resignation is presumed.⁶ A resignation may be viewed as involuntary only (1) "where [the resignation was] obtained by the employer's misrepresentation or deception" or (2) "where forced by the employer's duress or coercion."⁷ There is no allegation that the grievant's resignation was procured by misrepresentation, deception, duress or coercion. As such, only the question of constructive discharge is addressed by this ruling.

To prove constructive discharge, an employee must at the outset show that the employer "deliberately made her working conditions intolerable in an effort to induce her to quit."⁸ The employee must therefore demonstrate: (1) that the employer's actions were deliberate, and (2) that working conditions were intolerable.⁹ An employer's actions are deliberate only if they "were intended by the employer as an effort to force the [employee] to quit."¹⁰ Whether an employment environment is intolerable is determined from the objective perspective of a reasonable person.¹¹

Based upon a review of the situation as presented in her grievance, the grievant has not provided sufficient indication that management deliberately made her working conditions intolerable in an effort to induce her to quit. "[D]issatisfaction with work assignments, a feeling of being unfairly criticized, or difficult or unpleasant working conditions are not so intolerable as to compel a reasonable person to resign."¹² While the grievant may have perceived the proposed changes to her schedule as unbearable, EEDR has not reviewed anything that would suggest the grievant's only choice was to resign. Thus, the actions here cannot support a claim of constructive discharge.

Because EEDR cannot conclude that the grievant resigned involuntarily, the grievant had voluntarily concluded her employment with the Commonwealth of Virginia when she initiated

⁴ *E.g.*, EDR Ruling No. 2010-2510.

⁵ EEDR is the finder of fact on questions of access. *See* Va. Code § 2.2-1202.1(5); *see also* *Grievance Procedure Manual* § 2.3.

⁶ *See* *Staats v. U.S. Postal Serv.*, 99 F.3d 1120, 1123-24 (Fed. Cir. 1996).

⁷ *Stone v. Univ. of Md. Med. Sys. Corp.*, 855 F.2d 167, 174 (4th Cir. 1988) (citations omitted).

⁸ *Matvia v. Bald Head Island Mgmt.*, 259 F.3d 261, 272 (4th Cir. 2001) (internal quotation marks omitted).

⁹ *See* *Honor v. Booz-Allen & Hamilton, Inc.*, 383 F.3d 180, 186-87 (4th Cir. 2004); *Munday v. Waste Mgmt. of N. Am., Inc.*, 126 F.3d 239, 244 (4th Cir. 1997).

¹⁰ *Matvia*, 259 F.3d at 272.

¹¹ *See* *Williams v. Giant Food Inc.*, 370 F.3d 423, 434 (4th Cir. 2004).

¹² *James v. Booz-Allen & Hamilton, Inc.*, 368 F.3d 371, 378 (4th Cir. 2004); *see also* *Williams* 370 F.3d at 434 (holding that working conditions were not intolerable where "supervisors yelled at [employee], told her she was a poor manager, and gave her poor [performance] evaluations, chastised her in front of customers, and once required her to work with an injured back").

this grievance and, thus, did not have access to the grievance procedure.¹³ The grievance will be closed as of the date of this ruling.

EEDR's access rulings are final and nonappealable.¹⁴



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¹³ *Grievance Procedure Manual* § 2.3.

¹⁴ Va. Code § 2.2-1202.1(5).