

Issue: Access to the Grievance Procedure; Ruling Date: October 27, 2018; Ruling No. 2018-4632; Agency: Department of Corrections; 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 Corrections
Ruling Number 2018-4632
October 27, 2017

On October 12, 2017, the Office of Equal Employment and Dispute Resolution (“EEDR”) 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, EEDR concludes that the grievant does not have access to the grievance process to initiate this grievance.

FACTS

On June 10, 2017, the grievant began working in a classified position at one of the agency’s facilities. The grievant was terminated from employment with the agency on September 15, 2017.¹ EEDR received a dismissal grievance submitted by the grievant on October 12, 2017, in which she challenges her separation. In her dismissal grievance, the grievant alleges she was “deprived of [] due process” because she “had been employed with the state for 5+ years” After receiving a copy of the dismissal grievance, the agency informed EEDR that the grievant was terminated prior to the end of her probationary period and, thus, does not have access to the grievance procedure.

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 General Assembly has provided that all *non-probationary* state employees may utilize the grievance process, unless exempted by

¹ The grievant alleges she was told she was being terminated “because [she] went to the emergency room on [her] lunch break and didn’t return.” The agency’s letter notifying the grievant of her termination states that information disclosed during her background check prevented her from continuing her employment with the agency. In response, the grievant claims she was terminated before having an opportunity to confirm certain details about information contained in her employment application. However, the agency has notified EEDR that it learned of additional information that was unrelated to the details the grievant claims she was asked to verify. This additional information served as the basis for the grievant’s termination, and EEDR has reviewed nothing to indicate that the agency’s decision to terminate the grievant based on her background check was premature or otherwise improper.

² DHRM Policy 1.45, *Probationary Period*.

law.³ Employees who have not completed their probationary period do not have access to the grievance procedure.⁴

In this case, the grievant appears to assert that she had already completed her probationary period because she was previously employed by another state agency in a classified position for several years, until the time she accepted a position with the agency. However, the agency's Operating Procedure ("OP") 145.1, *Probationary Period*, states that "[a]ll persons hired, re-employed, transferred, promoted, or demoted to a position in the Corrections Officer series must serve a new 12-month probationary period," with certain limited exceptions.⁵ Thus, the grievant was required to serve such a probationary period upon beginning employment as a Corrections Officer with the agency. While agencies may require employees hired into certain positions to serve a new probationary period, DHRM Policy 1.45, *Probationary Period*, further states that "[r]ecruitment announcements for positions that require new probationary periods must include this requirement" and "[o]ffer letters or other written employment notification also must include information about the additional probationary requirement, as appropriate."

The recruitment announcement for the grievant's position did not state that a new probationary period would be required. However, the agency's written offer of employment noted that "[e]mployees entering or returning to State Service are required to serve a probationary period of twelve months," and explained performance expectations for the grievant as a probationary employee. In addition, the agency has presented information to show that grievant attended an orientation session when she began her employment with the agency, at which she was informed of its probationary period requirement. While the agency did not fully comply with the requirements of DHRM Policy 1.45, *Probationary Period*, because it failed to include information about the new probationary period in its recruitment announcement, EEDR finds that the grievant received sufficient notice that she was a probationary employee via her offer letter and the information presented during her orientation session. Because the grievant was a probationary employee, she does not have access to the grievance procedure to initiate a grievance to challenge her termination. Therefore, this dismissal grievance will be closed and not proceed to a hearing.

EDR's access rulings are final and nonappealable.⁶



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

⁴ E.g., EDR Ruling No. 2011-2940.

⁵ Department of Corrections OP 145.1, *Probationary Period*, § IV(B)(1).

⁶ Va. Code § 2.2-1202.1(5).