

Issue: Access to the Grievance Procedure; Ruling Date: December 29, 2017; Ruling No. 2018-4658; 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 2018-4658
December 29, 2017

The Office of Equal Employment and Dispute Resolution (“EEDR”) at the Department of Human Resource Management (“DHRM”) has received three Grievance Form As from the grievant challenging various issues related to his employment with or at the Department of Corrections (the “agency”). For the reasons set forth below, EEDR concludes that the grievant does not have access to the grievance process to initiate these grievances.

FACTS

On April 10, 2016, the grievant began working at Facility A in a full-time, classified position. He resigned from his position at Facility A on November 9, 2016, during his probationary period. The grievant was later employed at Facility B as a temporary worker from July 25, 2017 to August 17, 2017. The grievant subsequently began working in a full-time, classified position at Facility C on November 25, 2017. He was terminated from Facility C on December 7, 2017, based on an allegation that he had cheated on a test during a training class.

The grievant submitted three grievances to EEDR on December 8, 2017. In the first grievance, the grievant alleges he “was sexual [sic] harassed” on his last day of employment at Facility A, and claims employees “intimidated” him and retaliated against him by driving past his home. In the second grievance, the grievant claims “some of the staff would drive by and look at [him] funny” when he worked at Facility B, and that the agency discriminated against him because he applied and was not selected for a position at Facility B. In the third grievance, the grievant argues he was not intentionally cheating on the test at Facility C, but “was under the impression . . . that the test was open book.”

DISCUSSION

Pursuant to DHRM Policy 1.45, employees serve a 12-month probationary period, which can be extended by the agency for up to six months.¹ The General Assembly has provided that all *non-probationary* state employees may utilize the grievance process, unless exempted by law.² The grievant had not completed his twelve-month probationary period when he was terminated

¹ DHRM Policy 1.45, *Probationary Period*.

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

from Facility C on December 7, 2017. Employees who have not completed their probationary period do not have access to the grievance procedure.³ Accordingly, the grievant does not have access to the grievance procedure to initiate a grievance challenging his termination from Facility C or other matters that allegedly occurred when he worked at Facility A and Facility B.

Moreover, the grievance procedure provides that an employee must initiate a written grievance within thirty calendar days of the date he or she 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 thirty calendar-day period without just cause, the grievance is not in compliance with the grievance procedure and may be administratively closed. Even assuming the grievant had access to the grievance procedure to challenge issues relating to his employment at Facility A and Facility B, EEDR has reviewed nothing to show that the management actions cited in the grievances—including alleged sexual harassment and his unsuccessful participation in a selection process—occurred within the thirty calendar days preceding December 8, 2017 (i.e., on or after November 8, 2017). As such, the two grievances attempting to challenge matters that occurred when the grievant worked at those facilities are untimely, and the grievant has provided no evidence of just cause for his delay in filing those two grievances.

For these reasons, the grievant does not have access to the grievance procedure to initiate a grievance to dispute his termination from Facility C or to challenge management actions that allegedly occurred at Facility A and Facility B. The three grievances received by EEDR will be closed and no further action is necessary.

EDR's access rulings are final and nonappealable.⁵



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Office of Equal Employment and Dispute Resolution

³ E.g., EDR Ruling No. 2011-2940.

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

⁵ Va. Code § 2.2-1202.1(5).