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ACCESS RULING

In the matter of the University of Virginia Medical Center
Ruling Number 2022-5337
January 25, 2022

On December 14, 2021, the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) received a grievance submitted by the grievant, challenging her separation from employment. The University of Virginia Medical Center (the “university” or “agency”) has requested a ruling from EDR on whether the grievant has access to the grievance procedure, alleging that the grievant voluntarily resigned prior to initiating the grievance.

FACTS

On or about November 23, 2021, the grievant sent several text messages to her supervisor expressing that she was unhappy with certain circumstances at work. She wrote: “[W]ith all of that being said I’m putting in my 30 day notice tomorrow when I come in.” The parties agree that, during the following work shift, the supervisor and another manager met with the grievant to discuss her work and performance issues. The discussion turned contentious and the grievant ended the meeting, removing her identification badge and leaving the room without it. Shortly after leaving, the grievant called the university’s human resources helpline and reported the incident, expressing that she did not “like the way the employees are treated in her department” and that “there is no respect from the supervisors/managers.” The grievant requested follow-up from human resources regarding the incident. The next day, November 24, 2021, the grievant’s supervisor sent her the following text message: “Your employment with UVA health system has been officially terminated as of 11/24/21. Your badge has been obtained. You[] are not permitted to return to this department for any further business. It has been decided that you will not be eligible for rehire in this department and/or for the University of Virginia facility in any department in the future.” On November 25, 2021, the grievant emailed her department director to inform him that she had been “terminated when [she] actually did not do any wrong at all,” noting that no one from human resources had contacted her and that the loss of her job would cause her substantial difficulty.

The agency contends that, during the contentious meeting on November 23, the grievant became agitated and ultimately threw her badge down, saying “I’m done.” She then left the facility

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and could not be located during the remainder of her shift. The agency asserts that these actions constitute a voluntary resignation effective November 23, 2021.

In contrast, the grievant alleges that her supervisor was antagonistic and abusive during the meeting, talking over the grievant and saying the grievant could no longer work on the supervisor's shift. The grievant became very upset and ultimately said "I can't do this right now," because she felt the discussion had become hostile. She took off her badge because she felt the supervisor was saying the grievant was no longer wanted in the department. She called the human resources helpline to report the incident, then left work, expecting further contact from human resources.¹ She claims that she did not intend her actions as a resignation.

The grievant submitted a grievance directly to EDR on December 14, 2021, challenging her termination because "I was still never given a reason to why I was being let go." She asserts she should have been put on paid administrative leave while the agency investigated the meeting she reported as hostile, and she seeks to be eligible for rehire by the university in the future.

DISCUSSION

The General Assembly has provided that "[u]nless exempted by law, all nonprobationary state employees shall be covered by the grievance procedure"² 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 their employment with the Commonwealth prior to initiating the grievance."³ EDR has long held that once an employee's voluntary resignation becomes effective, they are not covered by the grievance procedure and accordingly may not initiate a grievance.⁴ In this case, the university inferred from the grievant's actions on November 23, 2021, that she was resigning, raising a question of access.

EDR is the finder of fact on questions of access.⁵ Upon consideration of the available evidence, the record does not establish that the grievant's actions constituted an immediate and voluntary resignation. The university's account hinges on its allegations that the grievant threw her access badge down, said she was "done," and then "walked off the job" – one day after communicating plans to resign soon. However, it is significant that the grievant took these actions in the context of a meeting where emotions ran high, after which she contacted human resources to report mistreatment by her supervisor. The university's documentation of that call describes specifics of what the grievant said and indicated she needed a call back, but the account does not confirm the grievant's intent to resign that day. Moreover, the following day, the grievant's supervisor advised her by text message that her employment had been "terminated" such that she would not be eligible for rehire. Nothing in this text message suggests that the grievant's employment was ending voluntarily. Indeed, the next morning, the grievant appealed to her department director to intervene in her purported termination, maintaining that she had not done anything wrong. According to the university, no documentation reflecting the grievant's choice to resign exists.

¹ The grievant claims that the human resources representative she spoke to advised her to go home for the day; the university disputes this claim.

² Va. Code § 2.2-3001(A).

³ *Grievance Procedure Manual* § 2.3.

⁴ *E.g.*, EDR Ruling No. 2005-1043.

⁵ *See* Va. Code § 2.2-1202.1(5); *see also* *Grievance Procedure Manual* § 2.3.

Therefore, although the grievant's actions could support an inference of voluntary resignation under some circumstances, additional context exists in this case to call the university's interpretation into question. In light of the grievant's subsequent inquiry with human resources, it is at least plausible that the grievant's intention was not to end her employment altogether but merely the "hostile" meeting with her supervisor, as she claims. As to the grievant's failure to report for work the following day, the grievant has represented that she believed she should be contacted by human resources before returning to work. Even if the grievant was incorrect in that belief, it is not clear how her failure to report would properly elicit the termination text message from her supervisor that same day.⁶ Absence in excess of three workdays⁷ without authorization may support the issuance of a Group III Written Notice with termination,⁷ and inability to meet the working conditions of one's employment also may lead to removal.⁸ Both potential methods of separation, however, require that the employee receive notice and an opportunity to respond in advance of the removal, and employees generally have access to the grievance procedure to challenge such involuntary separations.⁹

In sum, the grievant contends that she never intended to resign and that she removed her badge only out of frustration with her supervisor. The agency's evidence is not sufficient to refute the grievant's claim or to support a conclusion that she voluntarily resigned on November 23, 2021. Accordingly, in consideration of all the available facts and circumstances, EDR concludes that the grievant has access to the grievance procedure in this matter.

Procedural Guidance

When a facially valid resignation is found to be involuntary, EDR has held in the past that the appropriate remedy is to allow the grievant to make her decision again, with the benefit of reasonably adequate time to understand and consider her options.¹⁰ In this case, however, the grievant was not presented with such a choice because the university had not taken steps to discipline or discharge her. Although certain facts could support a conclusion that the university effectively terminated the grievant's employment for unsatisfactory performance, the university maintains that it was not considering termination as of November 23, 2021 and did not issue due process or performance counseling to the grievant relating to this time period.

As a result, this case is better analogized to those involving a non-disciplinary involuntary separation from employment, such as a layoff or removal for inability to meet working conditions. Grievances challenging separations of this nature do not advance directly to a hearing through the

⁶ EDR is unable to determine what prompted the supervisor to send the text message. However, the language of the text message is not reasonably interpreted as a confirmation that the grievant had voluntarily resigned the previous day.

⁷ DHRM Policy 1.60, *Standards of Conduct*, Attachment A: Examples of Offenses Grouped by Level.

⁸ DHRM Policy 1.60, *Standards of Conduct*, at 18.

⁹ *Id.* at 15-16, 18; *Grievance Procedure Manual* § 2.4 (describing the initiation requirements of the grievance procedure, including processes for challenging dismissals due to formal discipline and other types of separation from employment).

¹⁰ *E.g.*, EDR Ruling No. 2013-3564.

dismissal grievance process,¹¹ but instead use the expedited grievance process.¹² The expedited process involves a single management step, followed by a qualification decision from the agency head that may be appealed to EDR.¹³ Because this case involves a management action that appears to be substantially similar to other involuntary separations that are not eligible for the dismissal grievance process, the grievance will proceed using the expedited process.

EDR forwarded a copy of the original grievance paperwork to the agency when the grievant initially submitted her dismissal grievance. The agency is directed to contact the grievant to schedule the single management step meeting **within ten workdays of the date of this ruling.**¹⁴

Finally, we note that the evidence provided at this time does not appear to support a conclusion that the grievant's removal from her position was consistent with the processes for removal laid out in DHRM Policy 1.60, *Standards of Conduct*. Thus, if the grievant were to request a qualification ruling from EDR under these same facts, the grievance would likely qualify for a hearing. The grievant's assertion that she did not voluntarily resign, the supervisor's termination text, and the lack of documentation to establish the nature of the grievant's removal or other circumstances surrounding her separation raise questions that a hearing officer would be in the best position to resolve. The parties are therefore encouraged to reach a resolution of this matter or, at the very least, to bring greater clarity to these events while they have the opportunity to do so during the single management step of the grievance process.

EDR's rulings on access are final and nonappealable.¹⁵

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¹¹ The *Grievance Procedure Manual* defines "dismissals" as terminations due to formal discipline or unsatisfactory job performance. Va. Code § 2.2-3003(A); *Grievance Procedure Manual* § 2.5.

¹² *Grievance Procedure Manual* § 3.4 (stating that the expedited process may be used in cases involving "a separation not considered a 'dismissal' . . . , demotion, suspension without pay, or any other action that results in an actual loss of wages").

¹³ *Id.*

¹⁴ *Id.* § 3.4. The grievance was originally filed using the standard Grievance Form A, which can be used during the expedited process by skipping over the fields for the first and third management resolution steps.

¹⁵ Va. Code § 2.2-1202.1(5).