

Issue: Access to the Grievance Procedure; Ruling Date: January 30, 2013; Ruling No. 2013-3523; Agency: Department of Behavioral Health and Developmental Services; Outcome: Access Denied.



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

ACCESS RULING

In the matter of the Department of Behavioral Health & Developmental Services
Ruling Number 2013-3523
January 30, 2013

The grievant has attempted to initiate a dismissal grievance to challenge her separation from a facility of the Department of Behavioral Health & Developmental Services (the agency). For the reasons set forth below, EDR concludes that the grievant does not have access to the grievance process to initiate this grievance.

FACTS

The grievant began working with the agency on October 10, 2011. On October 9, 2012, the final day of the grievant's 12-month probationary period, the agency extended the probationary period by another six months to April 9, 2013. It appears that the grievant's employment was ultimately terminated on January 7, 2013. The Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) received the grievant's dismissal grievance on January 22, 2013, indicating that she was challenging her termination. Having received this grievance and reviewing the potential access problem discussed below, EDR opened this ruling to address the matter.

DISCUSSION

The General Assembly has provided that all *non-probationary* state employees may utilize the grievance process, unless exempted by law.¹ Employees who have not completed their probationary period do not have access to the grievance procedure.² The agency contends that the grievant was a probationary employee at the time of her termination. The grievant takes the position that the agency did not properly extend her probationary period and, thus, the period had expired on October 9, 2012. However, state policy does not support the grievant's argument.

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.³ The final day of the grievant's 12-month probationary period was October 9, 2012. Therefore, the grievant is not correct to say that the

¹ Va. Code § 2.2-3001(A); *Grievance Procedure Manual* § 2.3.

² *E.g.*, EDR Ruling No. 2005-1032.

³ DHRM Policy 1.45, *Probationary Period*.

probationary period “expired” upon her arrival to work on that date.⁴ If the grievant had “work[ed] beyond a 12-month period without being notified”⁵ of the extension, the probationary period would have been deemed to have been completed. However, the grievant received notice that the probationary period was extended on the final day of the 12-month period.⁶

Based on the foregoing, the grievant was still employed under an extended probationary status on the date of her termination, January 7, 2013. Accordingly, the grievant does not have access to the grievance procedure to initiate a grievance to challenge her separation from employment. Thus, the grievant’s dismissal grievance is now closed and will not be processed further. EDR’s access rulings are final and nonappealable.⁷



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⁴ The grievant also argues that DHRM Policy 1.45 requires a meeting approximately three weeks prior to the end of the probationary period to provide a progress review. While such a meeting would certainly be a better practice, rather than a last minute extension as was done in this case, there is nothing in DHRM Policy 1.45 that makes such a meeting a mandatory requirement. Rather, the language of the policy merely encourages management to hold the meeting with the word “should.” DHRM Policy 1.45, *Probationary Period*.

⁵ *Id.*

⁶ The grievant also points to the fact that the original Probationary Progress Review (PPR) form provided to the grievant on October 9, 2012 contained an error in the date to which the probationary period was extended. The grievant received an updated copy with a correction on October 12, 2012. Although there was an error with the original PPR form, there is nothing that EDR has reviewed in that form that would somehow justify an argument that the extension of the probationary period had not been accomplished properly or that the grievant had not received notice that her probationary period had been extended.

⁷ Va. Code § 2.2-1202.1(5).