

Issue: Access to the Grievance Procedure; Ruling Date: June 18, 2014; Ruling No. 2014-3900; 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 and Developmental Services  
Ruling Number 2014-3900  
June 18, 2014

On or about June 2, 2014, the grievant submitted a dismissal grievance to the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM). The Department of Behavioral Health and Developmental Services (the agency) alleges that the grievant voluntarily resigned prior to initiating the grievance and has requested a ruling from EDR on whether she has access to the grievance procedure to challenge her separation from employment. 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 was employed as a Market Store Associate at an agency facility. On or about June 2, 2014, the grievant initiated a Dismissal Grievance with EDR, indicating that she “[r]esigned from [her] position” and that her “[e]mployer is describing and documenting leave as a ‘Termination/Firing.’” Among other things, the relief requested by the grievant includes “[r]esignation to be honored.” In response, the agency indicates that it did process the grievant’s separation from employment as a resignation<sup>1</sup> and argues that, consequently, the grievant does not have access to the grievance procedure.

DISCUSSION

To have access to the grievance procedure, an employee “[m]ust have been a non-probationary employee of the Commonwealth at the time the management action or omission that formed the basis of the dispute occurred,” “[m]ust not have voluntarily concluded [her] employment with the Commonwealth prior to initiating the grievance,” and must not otherwise be exempted by law.<sup>2</sup> Thus, when an employee is separated from state employment, she may only file a grievance to challenge a termination or other involuntary separation.<sup>3</sup> In this case, both the grievant and the agency agree that the grievant resigned from her position on May 8,

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<sup>1</sup> The agency provided EDR with an Employee History Report for the grievant, upon which it is noted that the grievant “resigned effective immediately 05/8/2014.”

<sup>2</sup> *Grievance Procedure Manual* § 2.3; see Va. Code § 2.2-2905.

<sup>3</sup> The *Grievance Procedure Manual* defines an involuntary separation as a “[s]eparation which is not of free will.” See *Grievance Procedure Manual* § 9.

2014. Thus, the agency asserts that the grievant does not have access to the grievance procedure to raise any of the challenges set forth in the June 2, 2014 grievance.

DHRM Policy 1.70, *Termination/Separation From State Service*, classifies the “types of separation from state service,” including resignation and discharge, and describes “their related procedures.”<sup>4</sup> The policy defines “resignation” as “an employee’s voluntary separation from state service.”<sup>5</sup> Discharge, on the other hand, is “an employee’s involuntary termination from state service.”<sup>6</sup> If the grievant was discharged, she is entitled to pursue her claims regarding her separation from employment through the grievance process because her employment was not “voluntarily concluded” prior to the initiation of her grievance.<sup>7</sup>

Generally, the voluntariness of an employee’s resignation is presumed.<sup>8</sup> As a result, an employee’s resignation ordinarily may not be challenged using the grievance process absent some indication that the resignation was “obtained by the employer’s misrepresentation or deception” or was “forced by the employer’s duress or coercion.”<sup>9</sup> In this case, there is no indication that the agency procured the grievant’s resignation through misrepresentation, deception, duress, or coercion. In considering the totality of the circumstances in this case, the grievant’s separation is properly characterized as a voluntary resignation.

Accordingly, we find that the grievant voluntarily resigned on May 8, 2014 and that she does not have access to the grievance procedure to initiate a grievance to challenge her separation from employment. Therefore, this dismissal grievance will be closed and will not proceed to a hearing.

EDR’s rulings on access are final and nonappealable.<sup>10</sup>



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Christopher M. Grab  
Director  
Office of Employment Dispute Resolution

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<sup>4</sup> The policy also describes other categories of separation related to retirement and layoff. *See* DHRM Policy 1.70, *Termination/Separation From State Service*. As there is no question here that would implicate these provisions of the policy, they need not be discussed in this ruling.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Grievance Procedure Manual* § 2.3.

<sup>8</sup> *See* *Staats v. U.S. Postal Serv.*, 99 F.3d 1120, 1123-24 (Fed. Cir. 1996).

<sup>9</sup> *Stone v. Univ. of Md. Med. Sys. Corp.*, 855 F.2d 167, 174 (4th Cir. 1988).

<sup>10</sup> Va. Code § 2.2-1202.1(5).