

Issue: Access to the Grievance Procedure; Ruling Date: November 10, 2014; Ruling No. 2015-4030; Agency: Department of Game and Inland Fisheries: 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 Game and Inland Fisheries
Ruling Number 2015-4030
November 10, 2014

The grievant has requested that the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) issue a ruling on whether she has access to the grievance procedure in order to challenge her separation from the Department of Game and Inland Fisheries (the agency). For the reasons set forth below, EDR concludes that the grievant does not have access to the grievance process to initiate a grievance.

FACTS

The grievant began working with the agency on October 25, 2013 in a classified position. On October 22, 2014, the grievant was notified that she would be released from employment prior to the end of her probationary period due to performance related issues and a determination that she did not meet the required qualifications for the position. On October 23, 2014, the grievant was issued a termination letter. The grievant subsequently filed a dismissal grievance directly with EDR to challenge her separation from employment.

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.”¹ The grievant had not completed her twelve-month probationary period when she was terminated effective October 23, 2014. The General Assembly has provided that all *non-probationary* state employees may utilize the grievance process, unless exempted by law.² 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 to challenge her termination.⁴

¹ DHRM Policy 1.45, *Probationary Period*.

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

³ *E.g.*, EDR Ruling No. 2005-1032.

⁴ While the grievant does not have access to file a grievance, there may be other options available to her to challenge the agency’s allegedly discriminatory practices raised in her grievance. For instance, “[a] probationary employee who claims that termination or other disciplinary action was based on race, sex, color, national origin, religion,

EDR's access rulings are final and nonappealable.⁵



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sexual orientation, gender identity, age, political affiliation, veteran status, genetics, or disability may file a discrimination complaint with the Office of Equal Employment Services in the Department of Human Resource Management or other agencies as appropriate.” DHRM Policy 1.45, *Probationary Period*. The Office of Equal Employment Services can be contacted by calling 1-800-533-1414 or (804) 225-2136.

⁵ Va. Code § 2.2-1202.1(5).