

Issue: Access to the Grievance Procedure; Ruling Date: July 15, 2015; Ruling No. 2015-4177; Agency: Virginia Commonwealth University; Outcome: Access Denied.



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

**ACCESS RULING**

In the matter of Virginia Commonwealth University  
Ruling Number 2015-4177  
July 15, 2015

On June 6, 2015, the grievant mailed a dismissal grievance to the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”). Because the grievant had submitted a resignation prior to initiating his grievance, the grievant’s former employer, Virginia Commonwealth University (the “University”), challenges whether he has access to the grievance procedure to initiate this grievance.

The grievant was employed by the University as a Police Officer. On April 24, 2015, the University Police Department provided the grievant with a pre-disciplinary due process notice indicating that it intended to issue a Group II Written Notice for specified alleged misconduct, with termination as the recommended disciplinary action.<sup>1</sup> The notice stated that the grievant should “submit a letter of mitigating circumstances” no later than 9:00 a.m. on May 1, containing any information he wished the University to consider before finalizing its decision. At the grievant’s request, the disciplinary process was delayed to allow him additional time to respond. At a meeting on May 7, 2015, the grievant submitted a letter of resignation, which stated that he resigned “effective immediately.” The University accepted the grievant’s resignation and then issued the Group II Written Notice. The grievant subsequently mailed a dismissal grievance directly to EDR challenging the disciplinary action.

The General Assembly has provided that “[u]nless exempted by law, all nonprobationary state employees shall be covered by the grievance procedure . . . .”<sup>2</sup> 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 his/her employment with the Commonwealth prior to initiating the grievance.”<sup>3</sup> EDR has long held that

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<sup>1</sup> According to the University, the grievant had two active Group II Written Notices at the time the due process notice was issued. The accumulation of a third active Group II Written Notice would have been sufficient to warrant termination. See DHRM Policy 1.60, *Standards of Conduct*, §§ B(2)(b), (B)(3)(c) (stating that the issuance of “[a] second active Group II Notice normally should result in termination” and that “[a]n employee who is issued a Written Notice that would normally warrant termination but who is not terminated due to mitigating circumstances should be notified that any subsequent Written Notice for any level offense during the active life of the Written Notice may result in termination.”)


<sup>2</sup> Va. Code § 2.2-3001(A).

<sup>3</sup> *Grievance Procedure Manual* § 2.3.

once an employee's voluntary resignation becomes effective, he or she is not covered by the grievance procedure and accordingly may not initiate a grievance.<sup>4</sup>

In this case, there is no dispute that the grievant voluntarily resigned his employment with the University on May 7, 2015. The grievant filed the grievance after submitting his resignation. Because the grievant voluntarily resigned, he does not have access to the grievance procedure. However, we note in closing that the University rescinded the Written Notice on July 7, 2015 and notified the grievant that it had done so. As a result, even if EDR determined that the grievant had access to the grievance procedure under the specific facts of this case, the grievant's challenge to the disciplinary action is moot and there are no further issues to be addressed through the grievance process.

EDR's access rulings are final and nonappealable.<sup>5</sup>



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Christopher M. Grab  
Director  
Office of Employment Dispute Resolution

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<sup>4</sup> *E.g.*, EDR Ruling No. 2005-1043.

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