

Issue: Access to the Grievance Procedure; Ruling Date: July 8, 2015; Ruling No. 2016-4187; Agency: Virginia Department of Health; Outcome: Access Denied.



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

ACCESS RULING

In the matter of the Virginia Department of Health
Ruling Number 2016-4187
July 8, 2015

On June 30, 2015, the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) received a Dismissal Grievance Form A from the grievant. The Virginia Department of Health (the agency) challenges the grievant's access to the grievance procedure. 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 agency states that the grievant began working with the agency on September 25, 2014 in a classified position. On June 25, 2015, the grievant was released from employment due to allegedly unsatisfactory performance. The grievant subsequently filed a dismissal grievance directly with EDR to challenge his separation from employment. Upon receipt of a copy of the dismissal grievance, the agency has since informed EDR that the grievant was terminated prior to the end of his probationary period and, thus, should not have access to file this grievance.

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 his twelve-month probationary period when he was terminated on June 25, 2015. 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 his termination. As a result, this dismissal grievance filed will not proceed to a hearing and EDR will close its file.

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.

EDR's access rulings are final and nonappealable.⁴



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⁴ Va. Code § 2.2-1202.1(5).