

Issue: Access to the Grievance Procedure; Ruling Date: November 10, 2015; Ruling No. 2016-4261; Agency: Department of Juvenile Justice; 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 Juvenile Justice
Ruling Number 2016-4261
November 10, 2015

On October 28, 2015, the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management received a dismissal grievance submitted by the grievant. The grievant’s former employer, the Department of Juvenile Justice (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 the grievance.

FACTS

The grievant was employed by the agency as a Senior Juvenile Correctional Officer. On October 4, 2015 she submitted a written notice of resignation to the agency that was effective immediately, citing “extreme overwhelming circumstances and situations within the facility” as the reason for her decision to resign. The grievant submitted a dismissal grievance to EDR on October 28, 2015, seeking for her resignation be amended “to reflect [two] weeks notice” or “to rescind [her] resignation.” In the dismissal grievance, the grievant describes several incidents with residents at her facility that she alleges were “very hostile and out of control,” claims that she “felt bullied and overwhelmed” by the nature of her work assignments, and states that she resigned on October 4 “due to unsafe and overwhelming situations within the facility.”

DISCUSSION

The General Assembly has provided that “[u]nless exempted by law, all nonprobationary state employees shall be covered by the grievance procedure”¹ 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.”² EDR has long held that 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.³ In this case, the grievant initiated her grievance after submitting a written notice of resignation on October 4, 2015, raising questions of access.

¹ Va. Code § 2.2-3001(A).

² *Grievance Procedure Manual* § 2.3.

³ *E.g.*, EDR Ruling No. 2005-1043.

To have access to the grievance procedure to challenge her separation as a result of the resignation, the grievant must show that her resignation was involuntary⁴ or that she was otherwise constructively discharged.⁵ The voluntariness of an employee's resignation is presumed.⁶ EDR has reviewed nothing in the materials presented by the grievant that would rebut this presumption and show that her resignation was not the result of free and informed choice.⁷ Rather, the posture of this case is more appropriately reviewed as one of constructive discharge.

The grievant appears to assert that her resignation was an involuntary separation from the agency due to the alleged intolerability of working conditions at her facility. Such a claim is essentially one of constructive discharge. To prove constructive discharge, an employee must at the outset show that the employer "deliberately made her working conditions intolerable in an effort to induce her to quit."⁸ The employee must therefore demonstrate: (1) that the employer's actions were deliberate, and (2) that working conditions were intolerable.⁹ An employer's actions are deliberate only if they "were intended by the employer as an effort to force the [employee] to quit."¹⁰ Whether an employment environment is intolerable is determined from the objective perspective of a reasonable person.¹¹

In this case, the grievant has not provided sufficient evidence to show that agency management deliberately made her working conditions intolerable in an effort to induce her to quit. Moreover, assuming for purposes of this ruling only the truth of the grievant's allegations and description of the events that led to her resignation, the alleged conduct in this case was not so extreme as to make the grievant's working conditions objectively intolerable. "[D]issatisfaction with work assignments, a feeling of being unfairly criticized, or difficult or unpleasant working conditions are not so intolerable as to compel a reasonable person to resign."¹² Thus, while the actions cited in the grievance, if true, are regrettable, they cannot support a claim of constructive discharge.

In consideration of this analysis, EDR cannot conclude that the grievant was constructively discharged. Having assessed the totality of the circumstances in this case, EDR finds that the grievant's resignation was voluntary. As such, the grievant was not an employee of the Commonwealth of Virginia when she initiated this grievance and, thus, does not have access

⁴ E.g., EDR Ruling No. 2010-2510.

⁵ EDR is the finder of fact on questions of access. See Va. Code § 2.2-1202.1(5); see also *Grievance Procedure Manual* § 2.3.

⁶ See *Staats v. U.S. Postal Serv.*, 99 F.3d 1120, 1123 (Fed. Cir. 1996).

⁷ See *Stone v. Univ. of Md. Med. Sys. Corp.*, 855 F.2d 167, 174 (4th Cir. 1988).

⁸ *Matvia v. Bald Head Island Mgmt., Inc.*, 259 F.3d 261, 272 (4th Cir. 2001) (internal quotation marks omitted).

⁹ See *Honor v. Booz-Allen & Hamilton, Inc.*, 383 F.3d 180, 186-87 (4th Cir. 2004); *Munday v. Waste Mgmt. of N. Am., Inc.*, 126 F.3d 239, 244 (4th Cir. 1997).

¹⁰ *Matvia*, 259 F.3d at 272.

¹¹ See *Williams v. Giant Food Inc.*, 370 F.3d 423, 434 (4th Cir. 2004).

¹² *James v. Booz-Allen & Hamilton, Inc.*, 368 F.3d 371, 378 (4th Cir. 2004) (citations omitted); see also *Williams*, 370 F.3d at 434 (holding that working conditions were not intolerable where "supervisors yelled at [employee], told her she was a poor manager, and gave her poor [performance] evaluations, chastised her in front of customers, and once required her to work with an injured back").

to the grievance procedure. Because the grievant did not have access to initiate the grievance, EDR will not process the grievance further and the file will be closed.

EDR's rulings on access are final and nonappealable.¹³



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¹³ Va. Code § 2.2-1202.1(5).