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ACCESS RULING

In the matter of the Department of Behavioral Health and Developmental Services
Ruling Number 2020-4977
August 29, 2019

On August 26, 2019, the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management¹ received a Dismissal Grievance Form A from the grievant. The Department of Behavioral Health and Developmental Services (the “agency”) challenges whether the grievant has access to the state employee grievance procedure to initiate this grievance.

The grievant was employed on an hourly or “wage” basis at one of the agency’s facilities. He was terminated on or about July 3, 2019. The grievant filed a dismissal grievance directly with EDR on August 26, 2019,² challenging his separation from employment. Upon receipt of a copy of the dismissal grievance, the agency has confirmed to EDR that the grievant was a wage employee and, consequently, argues that he does not have access to the grievance procedure.

The General Assembly has provided that all non-probationary state employees may utilize the grievance process, unless exempted by law.³ Pursuant to Section 2.2-2905(11) of the Code of Virginia, “employees compensated on an hourly or daily basis” are exempted from the Virginia Personnel Act (“VPA”). Under Section 2.2-3002(4) of the Code, employees “in positions designated in [Section] 2.2-2905 as exempt from the [VPA]” do not have access to the grievance procedure. Because the grievant was employed as a wage (hourly) employee, he was

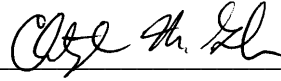
¹ The Office of Equal Employment and Dispute Resolution has separated into two office areas: the Office of Employment Dispute Resolution and the Office of Equity, Diversity, and Inclusion. While full updates have not yet been made to the *Grievance Procedure Manual* to reflect this change, this Office will be referred to as “EDR” in this ruling. EDR’s role with regard to the grievance procedure remains the same.

² EDR received the grievant’s dismissal grievance via U.S. Mail. While the grievance procedure provides that, “for purposes of establishing when a mailed grievance was initiated, the postmark date is considered the initiation date,” *Grievance Procedure Manual* § 2.2, the envelope in which the grievance was mailed to EDR does not have a postmark date. In the absence of further evidence from the grievant to indicate the date on which he mailed the grievance, EDR will consider it have been initiated on the date it was received: August 26, 2019. Because EDR determines that the grievant does not have access to the grievance procedure, the question of whether the grievance was initiated timely need not be addressed.

³ Va. Code § 2.2-3001(A); see *Grievance Procedure Manual* § 2.3.

thus exempt from the VPA and did not have access to the grievance procedure.⁴ Accordingly, this dismissal grievance will not proceed to a hearing and EDR will close its file.

EDR's access rulings are final and nonappealable.⁵



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⁴ See also DHRM Policy 2.20, *Types of Employment* (stating that “[w]age employees are not eligible to use the state grievance procedure”).

⁵ Va. Code § 2.2-1202.1(5).