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ACCESS RULING

In the matter of the Virginia Department of Social Services
Ruling Number 2021-5149
August 28, 2020

On August 24, 2020, the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) received a Grievance Form A from the grievant. Because the grievant was separated during her probationary period, the Virginia Department of Social Services (the “agency”) challenges whether she has access to the grievance procedure.

DHRM Policy 1.45, *Probationary Period*, states 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 General Assembly has further provided that all *non-probationary* state employees may utilize the grievance process, unless exempted by law.² The grievant began working for the agency in a classified position on February 10, 2020, and was terminated from employment on August 17, 2020. As a result, she had not completed her 12-month probationary period at the time of her separation. Employees who have not completed their probationary period do not have access to the grievance procedure.³

The grievant alleges that the agency has created an exception to the above rule in its policy, which allegedly allows a probationary employee who has been terminated to file a grievance challenging their termination. In response, the agency states that the policy provision relied upon by the grievant applies only to employees at local Departments of Social Services, who are not state employees. Though EDR is not familiar with the policy cited by the parties, the grievance statutes and procedure clearly and specifically state that only non-probationary state employees have access to the grievance procedure.⁴ A non-probationary state employee who has been terminated may therefore file a grievance to challenge their termination.⁵ There is no exception in

¹ DHRM Policy 1.45, *Probationary Period*, at 1.

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

³ E.g., EDR Ruling No. 2020-5017; EDR Ruling No. 2019-4920.

⁴ Va. Code § 2.2-3001(A) (stating that “all nonprobationary state employees shall be covered by the grievance procedure”); *Grievance Procedure Manual* § 2.3 (stating that, to have access to the grievance procedure, an employee “[m]ust have been a non-probationary employee of the Commonwealth at the time the management action or omission that formed the basis of the dispute occurred”); see DHRM Policy 1.45, *Probationary Period*, at 5 (“Probationary employees do not have access to the grievance procedure.”).

⁵ See *Grievance Procedure Manual* § 2.5.

applicable law or policy that grants a probationary state employee access to file a grievance challenging their termination or any other management action relating to their employment.

The grievant further argues that she should be given access to the grievance procedure because her termination was inconsistent with the provisions of DHRM Policy 1.45. Whether this is the case or not, the evidence before EDR plainly demonstrates that the grievant was a probationary employee at the time of her termination, and she herself has acknowledged that fact. Accordingly, we find that the grievant does not have access to the state employee grievance procedure to challenge her termination; this dismissal grievance will not proceed to a hearing and EDR will close its file. This ruling does not address whether some legal or other remedy may be available to the grievant in relation to her claims, but only determines that she is ineligible to pursue these claims through the state employee grievance procedure.

EDR's access rulings are final and nonappealable.⁶

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⁶ Va. Code § 2.2-1202.1(5).