

Issue: Access to the Grievance Procedure; Ruling Date: November 14, 2016; Ruling No. 2017-4432; Agency: Virginia Commonwealth University; Outcome: Access Granted.



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

ACCESS RULING

In the matter of Virginia Commonwealth University
Ruling Number 2017-4432
November 14, 2016

The Office of Employment Dispute Resolution (EDR) at the Virginia Department of Human Resource Management (DHRM) has been requested to issue a ruling on whether the grievant has access to the grievance procedure. Virginia Commonwealth University (VCU or the University) claims that the grievant does not have access to the grievance procedure because he was a probationary employee at the time the management action challenged by his grievance occurred.

FACTS

The grievant began working with the University on October 10, 2015 in a classified position. Immediately prior to the grievant's employment with the University, he had been employed on a full-time basis with another state college. On September 27, 2016, the grievant initiated a grievance to challenge a change to his Employee Work Profile (EWP) that occurred on the same day. On September 30, 2016, the agency responded to the grievant, asserting that as a probationary employee, he may not utilize the state grievance procedure. The grievant subsequently appealed to EDR to challenge the agency's access determination.

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 General Assembly has provided that all *non-probationary* state employees may utilize the grievance process, unless exempted by law.² Thus, employees who have not completed their probationary period do not have access to the grievance procedure.³ Accordingly, the question in this instance is whether the grievant was a probationary employee at the time the management action that formed the basis of his grievance occurred.⁴

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.

⁴ See *Grievance Procedure Manual* § 2.3.

Here, the grievant was employed at another state college for over ten months immediately before commencing employment with the University, specifically, from November 25, 2014 through October 9, 2015. At the time the management action he wished to grieve occurred, the grievant had been employed with the University for over eleven months, from October 10, 2015 through September 27, 2016. The agency argues that the grievant's probationary period began on his start date with the University, October 10, 2015, and would end on October 10, 2016. In response, the grievant argues that his probationary period ended on November 25, 2015, which would have been twelve months from his date of initial employment with the Commonwealth. He provides as support his Probationary Progress Review form, which indicates a projected Probation End Date of November 25, 2015. Further, he argues that DHRM Policy 1.45, *Probationary Period*, provides that the total length of time for the probationary period shall not exceed eighteen months.

However, as the grievant has pointed out, he is no longer a probationary employee, and as such, may initiate a grievance at any time. Thus, while the grievant may not have had access to the state employee grievance procedure on September 27, 2016, as of October 10, 2016, he had such access. The grievant has a current right to initiate a grievance to challenge the contents of his Employee Work Profile. EDR will deem the grievance as having been initiated on October 10, 2016, the first date the grievant's nonprobationary status began. The University is directed to process and respond to the grievance accordingly.⁵

EDR's access rulings are final and nonappealable.⁶



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⁵ The grievant contacted EDR to indicate that he is no longer employed with the University as of November 11, 2016. As such, the issues challenged in the grievance could be moot. The grievant may close his grievance should he decide not to proceed.

⁶ Va. Code § 2.2-1202.1(5).