



EMILY S. ELLIOTT
DIRECTOR

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

James Monroe Building
101 N. 14th Street, 12th Floor
Richmond, Virginia 23219
Tel: (804) 225-2151
(TTY) 711

ACCESS RULING

In the matter of the Department of Veterans Services
Ruling Number 2020-5091
May 7, 2020

On May 1, 2020, the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”)¹ received a dismissal grievance initiated by the grievant to challenge her separation from employment. The Department of Veterans Services (the “agency”) challenges whether the grievant has access to the state employee grievance procedure to initiate this grievance.

The grievant was employed by the agency on an hourly or “wage” basis. She was terminated on March 31, 2020. The grievant filed a dismissal grievance directly with EDR on or about May 1, 2020, challenging her termination.² 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 she 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, she was thus exempt from the VPA and does not have access to the grievance procedure.⁴ Accordingly, this dismissal grievance will not proceed to a hearing and EDR will close its file.

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 grievance by mail on May 1, 2020. Under the grievance procedure, “the postmark date is considered the initiation date” for mailed grievances. *Grievance Procedure Manual* § 2.2. The envelope in which the grievance was sent to EDR is not postmarked. Because the grievance could have been mailed no later than April 30—the day before it was received by EDR, and the 30th calendar day after her March 31 termination—EDR will assume the grievance was timely submitted. *See id.*

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

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

EDR's access rulings are final and nonappealable.⁵



Christopher M. Grab
Director
Office of Employment Dispute Resolution

⁵ Va. Code § 2.2-1202.1(5).