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ACCESS RULING

In the matter of the Department of Corrections
Ruling Number 2021-5251
May 3, 2021

The Department of Corrections (the “agency”) has requested an access ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) concerning the grievant’s April 19, 2021 dismissal grievance.

FACTS

On April 19, 2021, the grievant submitted a grievance directly to EDR, using a Grievance Form A – Dismissal Grievance. On the grievance form, the grievant describes the notification of being under investigation for alleged fraternization and being placed on administrative leave without pay. As relief, the grievant requests job restoration, compensation for lost wages, and a transfer to another department. In response, the agency asserts that the grievant has not been separated from employment and, in any event, does not have access to the grievance procedure as a contract employee at a correctional facility completely operated by a contractor.

DISCUSSION

If a Grievance Form A does not comply with the requirements for initiating a grievance, the agency may notify the employee, using the Grievance Form A, that the grievance will be administratively closed.¹ Dismissal grievances are initiated directly with EDR, and thus an agency is essentially unable to follow this process as outlined. Accordingly, the agency has requested a ruling from this Office to address whether the grievant has access to the grievant procedure.

As an initial matter, the *Grievance Procedure Manual* defines “dismissals” as terminations due to formal discipline or unsatisfactory job performance.² The management actions described in this grievance (an investigation and administrative leave without pay) do not constitute a “dismissal” as defined by the *Grievance Procedure Manual*. Moreover, the evidence before EDR indicates that the grievant has not been terminated and, indeed, the grievance does not describe a

¹ *Grievance Procedure Manual* § 6.2.

² Va. Code § 2.2-3003(A); *Grievance Procedure Manual* § 2.5.

separation from employment. Accordingly, EDR finds that this grievance is not eligible for the dismissal grievance process.

In such a situation, EDR would ordinarily forward the original grievance paperwork to the agency to be addressed through the appropriate management steps.³ However, the agency contends that the grievant does not have access to the grievance procedure. The General Assembly has provided that all non-probationary state employees may utilize the state employee grievance process, unless exempted by law.⁴ The information available to EDR confirms that the grievant is not a state employee, but rather a contract employee working for an agency contractor. As a contract employee, the grievant does not have access to the state grievance procedure to challenge the matters identified in the grievance. As such, the grievance is unable to proceed. EDR will close its file and the parties are advised that no further action is required. To the extent the grievant may have access to another process to address the work-related issues identified, the grievant should contact the human resources office for the contract employer.

EDR's rulings on access are final and nonappealable.⁵

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³ E.g., EDR Ruling No. 2020-4994; EDR Ruling No. 2019-4789; see *Grievance Procedure Manual* §§ 2.4, 3.1-3.3.

⁴ Va. Code § 2.2-3001(A); *Grievance Procedure Manual* § 2.3.

⁵ Va. Code § 2.2-1202.1(5).