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ACCESS RULING

In the matter of the Department of Juvenile Justice
Ruling Number 2021-5273
July 16, 2021

On June 2, 2021, 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 Department of Juvenile Justice (the “agency”) challenges whether she has access to the grievance procedure.¹

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.”² The General Assembly has further provided that all *non-probationary* state employees may utilize the grievance process, unless exempted by law.³

In this case, the grievant appears to have begun working in a classified position with the agency on May 10, 2021. Prior to the start of the grievant’s employment, the agency conducted a background investigation with her most recent employer. The information disclosed during the background investigation led the agency to determine that it should rescind its offer of employment to the grievant. Due to the timing of the background investigation, the grievant was notified of her termination on her first day of employment, after reporting to work.⁴

Although the grievant disagrees with the agency’s decision here, it is clear that she had not completed her 12-month probationary period at the time of her separation. Employees who have

¹ Prior to the issuance of this ruling, the grievant contacted EDR to request additional time to present further documentation. The grievant was initially given a deadline of June 23 to provide her documentation. The grievant contacted EDR by phone on June 23 to seek an additional 30 days. EDR attempted to contact the grievant by phone at that time, but did not reach her. A voicemail message was left for the grievant indicating that she had until July 14 to provide any documentation she wished to be considered or an explanation as to why additional time was needed to present any further documentation and what that documentation would show. EDR has received no further communication from the grievant. Accordingly, we are proceeding with the ruling at this time having given the grievant ample additional time to present information. Further, given the question at issue in this case, it is unclear what documentation the grievant could provide that would alter the result reached in this ruling.

² DHRM Policy 1.45, *Probationary Period*, at 1.

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

⁴ Whether the agency’s action is considered a rescission of the offer letter or a termination does not impact the outcome of this ruling.

not completed their probationary period do not have access to the grievance procedure.⁵ Accordingly, the grievant does not have access to the grievance procedure to initiate a grievance challenging her termination. Therefore, this dismissal grievance will not proceed to a hearing and EDR will close its file.⁶

EDR's access rulings are final and nonappealable.⁷

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⁵ E.g., EDR Ruling No. 2020-5017; EDR Ruling No. 2019-4920.

⁶ This ruling does not address whether any legal or other remedy may be available to the grievant based on her concerns about her termination. This ruling only determines that she is ineligible to pursue her claims through the state employee grievance procedure.

⁷ Va. Code § 2.2-1202.1(5).