

Issue: Qualification; Involuntary Resignation; Ruling Date: June 27, 2002; Ruling #2002-050; Agency: Virginia Polytechnic and State University; Outcome: not qualified; grievant did not have access to grievance procedure.



*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*

ACCESS RULING OF DIRECTOR

In the matter of Virginia Polytechnic Institute and State University  
No. 2002-050  
June 27, 2002

The grievant has requested a ruling on whether she had access to the grievance procedure when she initiated her grievance on October 26, 2001.<sup>1</sup> Virginia Polytechnic Institute and State University (Virginia Tech or the University) claims that the grievant does not have access to the grievance procedure because she voluntarily resigned her position and thus relinquished her right to the grievance process. The grievant claims that her resignation was forced because when she requested the resignation, she had already been terminated. For the reasons set forth below, this Department concludes that the grievant did not have access to the grievance process when she initiated her October 26<sup>th</sup> grievance.

FACTS

On September 26, 2001, grievant received a Group III Written Notice with termination for alleged falsification of records. Subsequently, on October 10, 2001, grievant sent a letter to her supervisor requesting that she be permitted to resign in lieu of termination and that a neutral reference be given on her behalf to future potential employers. Both of these requests were granted on October 11, 2001.

On October 26, 2001, grievant initiated a grievance in response to her termination. The second-step respondent concluded that the grievant does not have access to the grievance procedure because she voluntarily resigned her position prior to the initiation of her grievance. The grievant responded in writing that the second-step respondent's conclusion that she had voluntarily resigned "is far from the truth." Rather, the grievant asserted, she asked "to be allowed to resign in lieu of already having been terminated" because on employment applications, a resignation looked better than a termination. The grievant went on to state that her resignation was "forced" because she "had already been terminated."

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<sup>1</sup> A ruling request was presented to this Department by Virginia Tech Human Resources on behalf of the grievant. The request seeks a ruling on whether the grievance can be qualified for a hearing. Because this grievance has not progressed through the management resolution steps, this ruling will only determine whether the grievant has access to the grievance procedure.

## DISCUSSION

The General Assembly has provided that all non-probationary state employees may utilize the grievance process, unless exempted by law.<sup>2</sup> Employees who voluntarily resign, however, may not have access to the grievance process, depending upon the surrounding circumstances, such as the nature of their claim or when the grievance is initiated. For example, this Department has long held that any grievance initiated by an employee *prior* to the effective date of a voluntary resignation may, at the employee's option, continue through the grievance process, assuming it otherwise complied with the 30-day calendar rule. On the other hand, this Department has also long held that once an employee's voluntary resignation becomes effective, she may not file a grievance.

In this case, the grievant maintains that her resignation was involuntary because she had already been terminated. The determination of whether a resignation is voluntary is based on an employee's ability to exercise a free and informed choice in making a decision to resign. Thus, a resignation may be involuntary "(1) where [the resignation] was obtained by the employer's misrepresentation or deception... and (2) where forced by the employer's duress or coercion."<sup>3</sup> Under the "misrepresentation" theory, a resignation may be found involuntary if induced by an employee's reasonable reliance upon an employer's misrepresentation of a material fact concerning the resignation.<sup>4</sup> A misrepresentation is material if it concerns either the consequences of the resignation or the alternative to resignation.<sup>5</sup> The grievant has not alleged that the Virginia Tech made any misrepresentation that caused her to resign her position, nor has this Department found evidence of such.

A resignation may also arise from duress or coercion and thus be involuntary if in the totality of circumstances it appears that the employer's conduct in requesting resignation effectively deprived that employee of free choice in the matter.<sup>6</sup> Facts to be considered are: (1) whether the employee was given some alternative to resignation; (2) whether the employee understood the nature of the choice given; (3) whether the employee was given a reasonable time in which to choose; and (4) whether she was permitted to select the effective date of resignation.<sup>7</sup>

The grievant's written statements suggest that the grievant's decision to resign rather than to face termination was based on her concern over the potential impact of a termination on future employment. The grievant stated that it looks and sounds better on employment applications to resign rather than be terminated. This statement indicates

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<sup>2</sup> Va. Code § 2.2-3001(A) and *Grievance Procedure Manual* § 2.3(1) and (2).

<sup>3</sup> *Stone v. University of Maryland Medical System Corp.*, 855 F.2d 167, 174 (4<sup>th</sup> Cir. 1988).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

that grievant deliberately considered and elected to secure a certain outcome, a voluntary resignation, rather than risk the unpredictable result of a grievance hearing to which she was automatically entitled under *the Standards of Conduct*. Moreover, the grievant was able to reap the benefit of the bargain that she initiated with the University: her personnel file indicates that she resigned. Thus, the grievant was able to protect her work record.

The grievant had the choice to contest her termination through the grievance procedure, but the grievant declined to do so and opted for resignation instead. The fact that the grievant may have perceived her choice as between comparably unpleasant alternatives (resignation or termination) does not of itself establish that a resignation was induced by duress or coercion.<sup>8</sup> Therefore, it cannot be concluded that the grievant's resignation was anything other than voluntary. As such, the grievant was not an employee of the Commonwealth of Virginia when she initiated this grievance and, thus, does not have access to the grievance procedure.

#### APPEAL RIGHTS AND OTHER INFORMATION

For more information regarding actions you may take as a result of this ruling, please refer to the enclosed sheet. If you wish to appeal the determination that you do not have access to the grievance procedure to circuit court, please notify your Human Resources Office, in writing, within five workdays of receipt of this ruling.

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Claudia T. Farr  
Director

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Jennifer S.C. Alger  
Employee Relations Consultant

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<sup>8</sup> *Id.*