

Issue: Access to Grievance Procedure; Ruling Date: June 26, 2002; Ruling #2002-085, 086, 087, 092; Agency: Department of Juvenile Justice; Outcome: no access.



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

ACCESS RULING OF DIRECTOR

In the matter of Department of Juvenile Justice/ No. 2002-085, 086, 087, 092  
June 26, 2002

The grievant has requested a ruling on whether she has access to the grievance procedure with respect to four grievances filed with the Department of Juvenile Justice (DJJ) in February 2002. DJJ has denied access claiming that the grievances do not challenge her termination from the agency and that they were filed after the grievant's termination. For the following reasons, the grievant does not have access to the grievance procedure for any of these four grievances.

FACTS

The grievant was employed as a Sergeant/Program Discipline Instructor with DJJ until she was terminated on January 29, 2002. Prior to her termination, the grievant had been under a doctor's care. She was authorized to take short-term disability leave from October 30, 2001 to February 21, 2002. When she was able to return to work in January 2002, her doctor requested that she be transferred to a different facility on a part-time basis, and that she return in an administrative role, rather than to her prior position. In a letter dated January 11, 2002, DJJ informed the grievant that her job modification request had been granted and she had been transferred to another facility, starting January 14, 2002. The grievant failed to report to her new position, and was terminated on January 29.<sup>1</sup> The grievant claims that she did not accept the modification because the prison setting would have caused a great deal of anxiety and worsened her medical condition.

The grievant filed a grievance on February 1 (Grievance 1), alleging that the staff at her facility ignored her doctor's instructions. Specifically, she claims that they called her at home, exacerbating her condition. Furthermore, DJJ requested that she phone into the office every three days and provide medical documentation for her absence, which she claims violated her doctor's orders and affected her health. In her February 11 grievance (Grievance 2), the grievant claims that employees at the facility to which she was to be transferred were insensitive to her medical condition, because they asked her about her experiences at her prior facility, which triggered additional medical problems. In another grievance (Grievance 3), filed on February 22, the grievant alleges that DJJ gave her insufficient notice to report to her new position on January 24. In Grievance 4, filed February 28, the grievant claims that DJJ inappropriately stopped her disability

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<sup>1</sup> The grievant received a letter dated January 17 advising her that if she did not report to work by January 24, disciplinary action, with the possibility of termination, would be taken.

payments. The grievant also filed a grievance on February 27 (not at issue in this ruling), challenging a Group III Written Notice and terminations for failure to report for work in excess of three days.

### DISCUSSION

The General Assembly has provided that all non-probationary state employees may utilize the grievance process, unless exempted by law.<sup>2</sup> Under the grievance procedure, employees “must have been employed by the Commonwealth at the time the grievance is initiated (unless the *action grieved* is a termination or involuntary separation).”<sup>3</sup> The grievance procedure further states that if this criterion is not met, an agency may deny an employee access to the grievance procedure.<sup>4</sup>

In this case, it is undisputed that the grievant was terminated from DJJ on January 29. She filed a grievance on February 27 challenging that termination, and that grievance was allowed to proceed. However, her remaining four grievances challenge working conditions and circumstances that the grievant experienced prior to her termination. Because these four grievances do not grieve the termination itself, and because they were not initiated until after the grievant was no longer employed by DJJ, she does not have access to file them. It appears, however, that the information and claims contained in those grievances may be relevant to the grievant’s termination. Therefore, the issues presented by these grievances may be offered at hearing as background evidence in support of her February 27 grievance, rather than as separate grievances themselves.

### APPEAL RIGHTS AND OTHER INFORMATION

For more information regarding actions the grievant may take as a result of this ruling, please refer to the enclosed sheet. If the grievant wishes to appeal the determination that she does not have access to the grievance procedure to circuit court, she should notify the 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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Leigh A. Brabrand  
Employee Relations Consultant

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<sup>2</sup> Va. Code § 2.2-3001(A).

<sup>3</sup> *Grievance Procedure Manual* § 2.3, page 5 (emphasis added).

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