

Issue: Access: Access to the Grievance Procedure; Ruling Date: February 3, 2003;
Ruling #2002-181; Agency: Department of Corrections; Outcome: No access.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

ACCESS RULING OF DIRECTOR

In the matter of Department of Corrections
Ruling Number 2002-181
February 3, 2003

ISSUE:

Does the grievant have access to the grievance procedure?

RULING:

No. The grievant does not have access to the grievance procedure because she had not completed her probationary period at the time of her termination.

EXPLANATION:

The Code of Virginia establishes a grievance procedure to which only state employees who have successfully completed their probationary period have access.¹ Additionally, the Department of Human Resources Management (DHRM) Policy No. 1.45 states that the "normal probationary period is 12 months; however it can be extended as described in this policy for up to 18 months for performance reasons."²

In this case, the grievant was hired by the agency as a Corrections Officer on April 25, 2001. Accordingly, her probationary period was scheduled to end on April 24, 2002 (twelve months from her hire date). At her six-month review on November 9, 2001, she was rated as "Contributor."³ However, following this review, management asserts that her performance deteriorated. On April 24, 2002, she received a "Below Contributor" rating and her probationary period was extended until July 25, 2002.⁴ The grievant was given her final review on July 24, 2002 and offered the opportunity to resign or be

¹ Va. Code § 2.2-3001.

² DHRM Policies and Procedures Manual, Policy No. 1.45, page 1 of 7, effective 09/25/00, revised 08/01/01.

³ See Probationary Progress Review signed by grievant on 11/9/02.

⁴ See Probationary Progress Review signed by grievant on 4/24/02.

terminated. On July 25, 2002, the grievant was terminated. On August 21, 2002 the grievant filed a grievance with the agency.⁵

In sum, the grievant's employment records establish that she was terminated while still a probationary employee. Accordingly, this Department concludes that the grievant does not have access to the grievance procedure.

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 to circuit court, the determination that she does not have access to the grievance procedure, she must notify her Human Resources Office, in writing, within five workdays of receipt of this ruling.

Claudia T. Farr
Director

Deborah M. Amatulli
Employment Relations Consultant

⁵ During this investigation, the grievant conceded that she filed a grievance because she had misinterpreted the Grievance Procedure Manual to grant access to all employees who are terminated; she does not contest the fact that she was on probation at the time of her termination.