

Issue: Access/access to grievance procedure; Ruling Date: September 26, 2003; Ruling #2003-158; Agency: Department of Health; Outcome: grievant has access



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

ACCESS RULING OF DIRECTOR

In the matter of Department of Health  
No. 2003-158  
September 26, 2003

The grievant has requested a ruling on whether she had access to the grievance procedure when she initiated her grievance on July 21, 2003. The Department of Health (VDH or the agency) claims that the grievant does not have access to the grievance procedure because she went into "inactive" employment status when she was placed on long-term disability (LTD) on June 28, 2003. For the reasons set forth below, this Department concludes that the grievant did have access to the grievance process when she initiated her July 21<sup>st</sup> grievance.

FACTS

Prior to her separation, the grievant was employed as an Office Service Specialist with VDH. On December 30, 2002, the grievant was placed on short-term disability (STD). The grievant alleges that she was allowed to return to work on April 9, 2003 with light duty restrictions. The grievant worked with such restrictions until June 6, 2003, at which time the grievant alleges that the agency sent her home because management was unsure as to what "light duty" involved. Upon receipt of a note from the grievant's physician, the grievant was permitted to return to work on or about June 17, 2003; however she still required some accommodations on her job. On June 25, 2003, VDH informed the grievant that it could no longer accommodate her job modifications and sent her home.

The grievant's STD benefits ended on June 27, 2003. The grievant claims that she presented the agency with a return to work notice from her physician on June 27, 2003. The agency claims that this notice, although dated June 27, 2003, was not received by it until June 30, 2003. The notice released the grievant to return to work with no restrictions effective June 30, 2003. On June 28, 2003, the grievant was placed on long-

term disability. Because of her ability to return to work without restrictions, the grievant was released from LTD on June 30, 2003.

### DISCUSSION

The General Assembly has provided that all non-probationary state employees may utilize the grievance process, unless exempted by law.<sup>1</sup> The *Grievance Procedure Manual* specifically states that an employee must meet all of the following criteria to have access to the grievance procedure: (1) [the employee] must not be exempt from the Virginia Personnel Act; (2) [the employee] “must have been a non-probationary employee of the Commonwealth at the time the event that formed the basis of the dispute occurred”; and (3) [the employee] “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>2</sup> The grievance procedure further states that if these criteria are not met, an agency may deny an employee access to the grievance procedure.<sup>3</sup>

In this case, the agency claims that the grievant became an “inactive” employee of the Commonwealth on June 28, 2003 (the date she was placed on LTD). Further, the agency claims that the grievant’s placement on LTD did not separate her from state service, but that her separation occurred when she was released from LTD on June 30, 2003. The agency determined, however, that because the grievant’s access rights ended when she entered inactive status on June 28, 2003, she could not later revive such rights upon separation on June 30, 2003. As such, the agency appears to have determined that she was not an employee of the Commonwealth with access to the grievance procedure when she was placed on LTD, separated from state service, nor when she initiated her July 21, 2003 grievance.

As the agency correctly contends, an employee placed on LTD is considered an “inactive” employee of the Commonwealth.<sup>4</sup> In addition, during this Department’s investigation, the Department of Human Resources Management (DHRM), the agency charged with implementation and interpretation of the Commonwealth’s personnel policies, stated that because an employee on LTD is not guaranteed reinstatement to her former position<sup>5</sup>, DHRM considers that employee “separated” from state service upon being *placed* on LTD. Under the grievance procedure’s access requirements, a separated employee may initiate a grievance only if she is challenging her termination or involuntary separation.<sup>6</sup> As such, a grievant in LTD status may utilize the grievance process to challenge her placement on LTD, as long as the grievance is initiated on a timely basis--within 30 calendar days of the LTD placement.

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<sup>1</sup> Va. Code § 2.2-3001(A) and *Grievance Procedure Manual* § 2.3(1) and (2), page 5.

<sup>2</sup> *Grievance Procedure Manual* § 2.3(1), (2) and (3) page 5.

<sup>3</sup> *Id.*

<sup>4</sup> See VSDP FAQ’s for VSDP Coordinators and Human Resource Departments, page 5.

<sup>5</sup> See VSDP Handbook 2002, “Long-Term Disability,” page 10.

<sup>6</sup> See *Grievance Procedure Manual* § 2.3, page 5.

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In the present case, for the purposes of the grievance procedure, the grievant was no longer an employee of the Commonwealth as of June 28, 2003, the date she was placed on LTD and thus “separated.” However, because the grievant’s July 21, 2003 grievance timely challenges her placement on LTD, the grievant had access to the grievance procedure under the standards established in the *Grievance Procedure Manual*.

#### CONCLUSION

The grievant has access to the grievance procedure for purposes of her July 21, 2003 grievance. If the grievant wishes to continue with her grievance, she has five workdays from receipt of this ruling to advance the grievance to the second-step respondent so that he may conduct the mandated second-step meeting and address the grievance on the merits.

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Claudia T. Farr  
Director

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