

Issue: Compliance/access to grievance procedure based on employment status; Ruling Date: March 18, 2004; Ruling #2003-530; Agency: Department of Medical Assistance Services; Outcome: grievant not an employee, grievance may be administratively closed.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Medical Assistance Services
EDR Ruling #2003-530
March 18, 2004

The grievant has requested a compliance ruling relating to the October 23, 2003 grievance she initiated with the Department of Medical Assistance Services (DMAS). The agency has refused to process her grievance on the basis that she was not a DMAS employee at the time she initiated her grievance. For the reasons set forth below, this Department concludes that because the grievant was not employed by DMAS at the time she initiated her grievance, the grievance is noncompliant and may be administratively closed.

FACTS

The grievant was employed by the Virginia Office for Protection and Advocacy (VOPA) as a Service Coordinator. She applied for a position with DMAS as Hearing and Legal Services Officer II and on August 29, 2003 she was informed that she was the successful candidate. The grievant submitted her resignation to VOPA on September 3, 2003, to become effective September 24, 2003.

On September 17, 2003, the grievant was informed that a reference check into her employment with VOPA revealed discrepancies between the duties that she asserted she performed at VOPA and those that management claimed she performed. On September 21, 2003, the grievant addressed the alleged discrepancies via a letter to the DMAS Human Resources Director. On September 23, 2003, the DMAS Human Resource Director informed the grievant that the employment offer was being rescinded. Thus, due to her prior resignation from VOPA, the grievant became unemployed as of September 25, 2003.

DISCUSSION

The grievance procedure has long required that an employee's grievance must "arise in the agency in which the employee works."¹ In this case, the grievant is

¹ *Grievance Procedure Manual*, § 2.4, page 6.

challenging DMAS's revocation of its employment offer.² While the grievant was offered a position with DMAS, which was later rescinded, she was never actually a DMAS employee. Because she never worked for DMAS, the grievant cannot initiate a grievance with DMAS. Accordingly, the October 23, 2003, grievance may be administratively closed. This Department's rulings on matters of compliance are final and nonappealable.³

Claudia T. Farr
Director

William G. Anderson, Jr.
EDR Consultant, Sr.

² The issues listed on the grievant's Grievance Form A are "improper termination/ arbitrary and capricious revocation of job offer." Furthermore, in the grievant's December 13, 2003 letter to this Department seeking a compliance ruling, the grievant reiterates that "My issue is improper termination and arbitrary and capricious revocation of the job offer by DMAS." It should also be noted that the grievant initiated a second grievance with VOPA. She indicated to this Department's investigating consultant that the VOPA grievance was unsuccessful and that she did not appeal that grievance.

³ Va. Code § 2.2-1001(5).