Issue: Qualification/Separation/Involuntary Resignation; Ruling Date: November 17, 2003; Ruling #2003-114; Agency: Department of Mental Health, Mental Retardation and Substance Abuse Services; Outcome: not qualified. (keywords = settlement agreement, unemployment benefits)

COMMONWEALTH *of* VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Department of Mental Health, Mental Retardation and
Substance Abuse Services
Ruling No. 2003-114
November 17, 2003

The grievant has requested a ruling on whether his November 29, 2002 grievance
with the Department of Mental Health, Mental Retardation and Substance Abuse Services
(DMHMRSAS or the agency) qualifies for a hearing. The grievant claims the agency
unfairly applied or misapplied policy, procedure and regulation and violated the intent of
a Settlement Agreement between the grievant and the agency. For the reasons discussed
below, this grievance does not qualify for hearing.

FACTS

The grievant was employed as a Direct Services Associate II with one of the
agency's facilities. On August 15, 2002, he was issued a Group III Written Notice, and
his employment was terminated. Subsequently, on September 13, the grievant timely
challenged this disciplinary action through the grievance process. On October 22, 2002,
the agency replied to a request from the Virginia Employment Commission (VEC) for
regarding the grievant's termination and whether he was eligible for unemployment
benefits. The September 13 grievance was resolved through a Settlement Agreement
(Agreement) on November 8, 2002, and the hearing officer was advised that a settlement
of the issues had been reached, thus rendering the hearing unnecessary. Thereafter, the
hearing officer issued an Order of Dismissal "with no possibility of further appeal,"
which referenced (but did not incorporate the terms of) the parties' settlement.

Under the terms of the Agreement, the grievant was reinstated from on or about
November 11, 2002 until December 2, 2002, and in consideration of specific actions to
be taken by the agency, the grievant agreed to "release the agency from any and all
claims, demands, grievances, lawsuits, charges, complaints and actions of any kind
arising out of or relating to the Written Notice, the termination, the resignation and/or
[his] related grievance." On several occasions during his reinstated employment, the
grievant requested the agency to correct or modify the information it had previously

provided to the VEC regarding the details of his termination. The grievant disputes when and what specific information was provided.

On November 29, 2002, the grievant initiated a grievance challenging the facility's alleged failure to take the corrective action he requested.[1] The agency denied the grievant access to the grievance procedure for a number of reasons. Subsequently, the grievant requested a ruling from this Department. We found that the grievant did have access to and was also in compliance with the requirements of the grievance procedure.[2] After receipt of the ruling, the grievance proceeded through the management resolution step process. On May 20, 2003, the agency head denied qualification of the grievance, indicating that the claims presented in the grievance do not qualify for a hearing because the facility has acted in good faith and is in compliance with the terms of the Agreement. On the other hand, the grievant denies the agency's compliance with the Agreement and asserts that the actions of agency personnel constitute an unfair application of the Code of Virginia.

<div align="center">DISCUSSION</div>

All complaints initiated in compliance with the grievance process may proceed through the three resolution steps set forth in the grievance statute, thereby allowing employees to bring their concerns to management's attention. However, only certain issues qualify for a hearing.[3]

In this case, the grievant challenges the alleged actions and inaction of agency personnel concerning information provided to the VEC detailing his August 2002 separation from state service and the agency's alleged failure to correct and/or modify that information following the November 2002 Settlement Agreement. When examined, the challenges in his November 29 grievance all relate to actions taken (or not taken) as a result of his Group III Written Notice and termination. As such, the claims are covered by the terms of the parties' November 2002 Settlement Agreement, in which the grievant agreed to release the agency from any and all claims of any kind (explicitly including grievances), "arising out of or relating to the Written Notice, the termination, [and] the resignation."

This Department previously held that grievant had access to the grievance procedure to initiate the November 29 grievance with the agency, and that his grievance was in compliance with the grievance process. However, our ruling also stated that this Department has no authority to enforce the terms of a contract between an agency and an employee. Thus, while such issues may proceed through the management resolution steps for a possible resolution, they do not qualify for a hearing. Accordingly, this grievance does not qualify for a hearing.

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[1] After the initiation of his grievance, the agency sent a letter to the VEC indicating that the Group III Written Notice had been withdrawn and expunged from the grievant's records.
[2] *See* EDR Ruling No. 2003-006, dated March 24, 2003.
[3] Va. Code § 2.2-3004 (A).

APPEAL RIGHTS AND OTHER INFORMATION

For information regarding the actions the grievant may take as a result of this ruling, please refer to the enclosed sheet. If the grievant wishes to appeal this determination to the circuit court, the grievant should notify the human resources office, in writing, within five workdays of receipt of this ruling. If the court should qualify this grievance, within five workdays of receipt of the court's decision, the agency will request the appointment of a hearing officer unless the grievant wishes to conclude the grievance and notifies the agency of that desire.

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Claudia T. Farr
Director

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Susan L. Curtis
EDR Consultant